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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner,

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF TEXAS

APPENDIX III

STATEMENT OF FACTS ("S.F.")
(Pages 8 to 315)

STATEMENT OF FACTS

"SF"

with anyone you need.

Section 409: Change of residence for athletic purposes. (a) Time restriction. Student who changes his school district or attendance zone for athletic purposes may not participate in a league contest until he has resided for at least one year in the district, a district or attendance zone to which he moved. The District Executive Committee for the district into which he moves shall determine when he becomes eligible.

Subparagraph (b) Recruiting: An individual is presumed to have changed his school district for athletic purpose if he was recruited.

(c) Parent forms. An individual is presumed to have changed his school district for athletic purposes until his parent's change their residence to a new district or

attendance zone. The superintendent, principal and coach sign a statement that he was not recruited by the new school and that he did not change districts or attendance zones for athletic purposes and the parents sign a sworn statement before a school administrator that they reside in the new district or attendance zone and that the change was not made for their child's athletic purposes.

(d) Negative presumption: An individual is presumed not to have changed his school for athletic purposes if (1) he did not represent his former school in a league athletic contest while he was in the 9th or higher grades. (2) He changed school

district or attendance zones because the school district or attendance zone line was changed by the school board or other appropriate authority or (3) He transferred to a high school within a school district and the district vocational or magnet school if he transferred during the first year and that he had an opportunity to do so.

I'll ask the Plaintiff. Does that appear to be a correct reading of the applicable rule?

MR. BOYD: Yes, it does, your Honor.

THE COURT: I'll ask Mr. Nolan.

MR. NOLAN: Yes, your Honor.

THE COURT: Thank you, both. We know what rule we're dealing with at this moment.

Now, let me go back and look one

more --

Now, I noticed that Mr. Boyd filed on September 10th, 1985 a Plaintiff's First Amended Original Petition of 14 pages. I also note that the Defendant has presented to the Court and the Court has received for filing Defendant's First Amended Original Answer. Is there any question about the pleadings upon which the Court is going to conduct the hearing at this point? Is there any objection to Plaintiff's First Amended Original Petition or the Defendant's First Amended Original Answer?

MR. BOYD: Your Honor, I don't think that there is. Mr. Nolan and I have diligently labored to accomodate one another in that regard.

of my opening statement, so I don't need to get into that right now.

So those are the two major issues: Did they abide by what they were supposed to have done? Did they properly consider this under their standard procedures? And then Number 2: Was there an arbitrary or discriminatory application of the rule, even if it's valid?

THE COURT: So, here's the question I have before we get to your ten minute opening statement.

MR. BOYD: Yes, sir.

THE COURT: You said did they follow the standard

of procedures. All right, I would like to have those enunciated.

MR. BOYD: Yes, sir.

THE COURT: You've given me 409.

MR. BOYD: Yes, sir.

THE COURT: Now, where are the standard of procedures?

MR. BOYD: Subchapter "h" is a contested case, the various witnesses of the District Executive Committee said that they attempt to follow it, no reason they don't try to follow it, and that they use it in order to try to insure fairness to the students. Subchapter "h" sets forth, of this Constitution and Contest Rules.

THE COURT: Do you all have that?

MR. BOYD: You have a copy of that as well.

THE COURT: I may ask you to help me find it here.

MR. BOYD: That's all right.

THE COURT: Would you step up here and locate it for me?

MR. BOYD: Yes, sir.

THE COURT: Because I've got 409. The reason I'm asking you do this is to make it rapid. You are more familiar that I. If you find it, will you remove it so we can have it on top?

MR. BOYD: This came off an exhibit to the First Amended Original Petition and Application for Injunctive Relief.

May it please the Court, the other standard was more nebulous but during discovery it's developed and the various superintendents talked about providing due process in such matters as these affecting students or administrator faculty or whatever happened to be -- just general due process protections: notice, opportunity to be heard, and things like that.

The COURT: Let me ask you this. Standby, just let me take a look at this right now. This is the way to know. Find my way first as I go into it then I won't have to back out. I'm looking at Subchapter "h". Section 100 is general. Section 101 is

cases, contested cases. Section 102: Notice of evidentiary hearing. I'll ask Mr. Boyd, is that going to be an issue on notice?

Mr. BOYD: Yes, your Honor.

THE COURT: All right, that will be in issue then.

(A) Evidentiary hearing. In all contested cases, all parties, including applicants for waiver of eligibility rules and alleged violators of UIL rules must be afforded the opportunity for an evidentiary hearing by the appropriate UIL body after a reasonable written notice.

(B) Written notice. The notice shall include

(1) a statement of the date, days, time and place and

nature of the hearing;

(2) statement of the rules under which the hearing is being held;

(3) a reference to the particular sections of the rules involved, and

(4) a short and plain statement of the matters asserted including (a) in the case of an application for waiver of eligibility rules, the relief sought, or (b) in the case of alleged violations, that the alleged violator should show cause why he should not be found in violation. (c) level of detail of notice. If the UIL or other party is unable to state the matters in detail and the time notice is served. Initial notice maybe limited to a statement of the issues involved, there after on timely written application, a more definite and detailed statement shall be furnished prior to the

hearing.

Section 103. Evidence and argument. In all contested cases, opportunity shall be afforded for all parties to respond and present evidence and argument on all issues.

Section 104. Informal disposition. Informal disposition may be made of all uncontested cases by written stipulation of fact, written settlement, written waiver of hearing and written consent order.

Section 105. Record of evidentiary hearing. Record in a contested case includes:

(1) all pleadings, motions and intermediate rulings.

(2) evidence received or considered.

(3) a statement of matters officially noticed.

(4) questions and offers of proof, objections and rulings on them.

(5) proposed findings of fact and conclusions concerning applicability of rules.

(6) any decision, reasons or report by the hearing officer, and

(7) all UIL staff memoranda or data submitted to or considered by the hearing officer.

Tape recording transcription.

Proceedings or any part of them of the evidentiary hearing may be tape recorded or transcribed upon the order of the hearing officer who may require advance deposit of all sufficient funds to cover the costs and he shall assess the cost of the transcript to

the unsuccessful party in his proposal for decision.

Section 106. Pleadings of fact, reasons and conclusions. I'll skip the body.

Section 107. Hearing officer. Chairman, as the hearing officer, chairman of the body conducting the evidentary hearing or other designated UIL Officer shall be the hearing officer.

Notary public. The hearing officer shall be a notary public or shall have the contested case presented before a notary public.

OPENING STATEMENTS

Responsibilities. The hearing officer shall have the responsibilities one through ten.

(1) to file any request for evidentiary hearing.

(2) to determine parties and interested persons direct or contesting parties and interested persons to appear at a specified time and place for a prehearing conference for purposes set out in Section 107.

(4) rule on prehearing motions.

(5) conduct the hearing in accordance with UIL Constitution and Contest Rules.

(6) administer or have a notary public administer oaths to witnesses.

(7) examine witnesses.

(8) receive evidence.

(9) rule upon admissibility of evi-

dence.

(10) issue requests to persons to appear and testify.

(11) issue requests to persons to produce evidence at a specified time and place.

(12) rule on motions during hearing upon the advice of the UIL legal counsel.

(13) keep a complete of each evidentiary hearing.

(14) transmit the record including his written proposal for decision to include findings of fact, reasons and conclusions about the applications of UIL rules to the contested

case to the appropriate decision making body when completed.

(15) take such other actions upon the advice of the UIL legal counsel that are consistent with the UIL Constitution and Contest Rules in order to provide a fair, just and proper evidentiary hearing.

Section 108 prehearing conferences.

(a) considerations at the conference. They are enumerated one through seven.

(b) prehearing order of the hearing officer may prepare a written prehearing conference order.

Section 109. Rules of Procedure at hearing. Usual procedures: The hearing officer shall utilize procedures set out in the UIL Constitution and Contest Rules and special rules promulgated by the State Executive Committee in conducting the eviden-

tiary hearing.

Procedural guides and on usual cases the UIL Constitution and Contest Rules and special rules of the state executive committee do not address specifically, the hearing officer shall utilize the adminstrative procedures in Texas Register Act in the Texas Rules of Civil Procedure upon the advice of UIL legal counsel as to procedural guides.

Section 110. Admissible evidence.

(a) Limitations in contested cases. Any evidence offered by a party except irrelevant, immaterial or unduly repetitious evidence shall be received into evidence.

(b) Rules of Evidence inapplicable. The Rules of Evidence as applied in the courts of this state, any other state or in the federal rules shall not apply except that the UIL shall give effect to the rules of privilege recognized by law.

(c) Handling objections. Objections to evidentiary offers may be made and shall be noted in the record.

Written evidence subject to these requirements of the hearing will be expedited and the interested party will not be prejudiced substantially. Any part of the evidence may be received in written form.

Section 111. Sworn testimony.

Section 112. Cross-examination.

Section 113. Official notice.

(a) Judicially known facts.

(b) UIL expertise.

(c) official interpretations.

(d) Official staff opinions.

(e) Contested official notice.

Section 114. Legal counsel.

(a) In contested cases parties may be assisted by legal counsel.

(b) Counsel or the hearing officer. The hearing officer may obtain the advice of UIL legal counsel on matters of procedure, offers of evidence and objections.

Section 115. Parties and interested persons sworn

written request to become a party.

(b) Timely request.

(c) Contents of request.

(d) Admission of party.

(e) Request to become interested person.

(f) Timely request.

(g) Admission of interested persons.

(h) Rights of a party. I'll read that. A person admitted as a party to a contested case has a right to

(1) participate in prehearing conferences;

(2) present evidence at the hearing;

(3) cross examine witnesses at the hearing;

(4) make motions and receive rulings on objections at the hearing; and

(5) appeal the decision of a contested case as provided by law. Rights of an

interested person admitted as an interested person to a contested case has only the right to present evidence in the contested case.

116. Discovery. Good cause required unavailable unless good cause shown. Scope of discovery. Refers to the Texas Rules of Civil Procedure.

117. The burden or proving entitlement to the relief requested in any contested or uncontested case shall be upon the moving party.

WE will have to decide who was and who is the moving

party, of course, we get to it at any point. That's the burden of proof.

Decisions in cases, 119.

I skipped 118. Standard of proof. Standard of proof in any contested or uncontested case is a preponderance of credible evidence.

119. Decision in cases.

(a) consideration that a reasonably scheduled open meeting of the body that conducted the evidentiary hearing, the cases shall be decided by the vote of its impartial members upon the consideration of a record of the case in terms of decisions concerning proposed findings of fact, reasons and conclusions about the application of rules including cases.

(b) Deliberations. After determining any involvement of members pursuant to section 25

and the case of District Executive Committees, the body may retire to a room or exclude everyone from the room who is not a voting member of the body in order to deliberate upon the record of evidence before taking their vote in open meeting. No party or person involved in the case and no one other than the voting members of the body may be present during such deliberations.

(c) Decision. The decision upon the case must be a binding action in the form of a written order to accept, specifically modify, or reject a hearing officer's proposal for decisions with written findings of fact, reasons and conclusions about the

applications of the UIL rules and the case of rejection.

Section 120. Proposals for decision from a party. A party may submit a written proposal for decision for consideration.

Section 121. Motions for rconsideration at rehearing.

(a) Urging the motion. Any party may urge within a reasonable time after a decision in a contested case a motion for reconsideration or rehearing with a body having original jurisdiction or with a State Executive Committee on an appeal, denial, render decision final. The denial of a motion for reconsideration or rehearing finalizes the decision.

(c) Motion for reconsideration or rehearing is granted in whole or in part, previously rendered decision or orders is

vacated in its entirety.

(b) Time periods for motions for reconsideratino shall be by agreement between the hearing officer and the parties.

Section 122. Appeals to the State Executive Committee.

(a) Substantial evidence reviewed. The State Executive committee considers an appeal decision by applying a substantial evidence test to the findings of fact, reasons, conclusions upon the rules that are stated in the record to determine if the decision is reasonably supported there by.

(b) No new evidence.

(c) Considerations. In its consideration the State Executive Committee shall determine if the decision is purposefully based upon facts made evident at the hearing and made after due admission. If the State Executive Committee determines that the decision is beyond the jurisdiction of UIL and is arbitrary, not based upon substantial evidence or capricious, the committee shall reverse the decision and may remand the case for further consideration or render final decision.

(d) Decision. The decision upon a contested case shall be a binding action in the form of a written order to accept specifically, modify, reject, the appeal decision and render a final decision or remand the case for further hearing. If written findings of fact, reasons an conclusions about

the application of the UIL rules in the case of rejection.

Section 123. Ex parte consultations. No person shall consult out of the presence of all parties to the case with the hearing officer or members of the body deciding the case. Provisions with respect to ex parte consultations, the adminstrative procedures Texas Registers Act may be used as a guide to handling such matters in contested or uncontested cases pending from the UIL.

And then we move to subchapter "j". Rules and amendments. Which I consider to be probably not germane in this case. One thing I was looking for. I'll ask Mr. Boy, maybe

Mr. Nolan can aid, if he does not, where is the provision for appeal to a district court?

Mr. BOYD: Your Honor, the rule 409 not only does not, the rules here do not direct the parties to the Court first of all.

THE COURT: I didn't hear your last statement.

MR. BOYD: The rules here do not direct the parties to the Court. These are intended to govern the UIL activity. But rule 049, transfer issues, are the one eligibility category which does not even have an appeal within the UIL system.

In other words, other provisions on eligibility which may have to do with age or whatever it might be or the number of years somebody has been in high school, those kind of things have appeals within the UIL frame work. The one area has no appeal to a higher

body.

THE COURT: Is there any general provision that provides for any appeal?

MR. BOYD: Not in these rules for 409 eligibility request.

THE COURT: All right. Are you ready to proceed with your ten minute opening statement?

MR. BOYD: We are, your Honor.

THE COURT: All right, sir, you may proceed. Before you do, I'll ask counsel, what's your matter?

MR. BOYD: May it please the Court. I want to take the Court to one or two more quick areas the Court didn't quite get into.

THE COURT: I won't count that on your time if you want to give me some more rules.

MR. BOYD: Your Honor, Section 307 under Rules of Construction, it goes into general construction and then mandatory remissive directory or factual construction. And then part "C" concerns the prevailing authority of the UIL constitution over contest rules.

Subpart "D", which we think is germane here is that state law prevails over the UIL Constitution and Contest Rules, Texas State law, common law of this state. And anywhere -- it stays where any term of sec-

tion of the Constitution or Contest Rules is found to be inconsistent with the laws of the State of Texas, the law shall prevail. And the remaining terms and sections of the Constitution and Contest Rules shall continue in effect.

THE COURT: What is that rule, paragraph and line?

MR. BOYD: Section 307, subpart "d".

THE COURT: It says where found in conflict.

MR. BOYD: Where in conflict, the rules of law prevail over the UIL Constitution and Contest Rules.

THE COURT: All right, sir, 308 "d".

MR. BOYD: The other couple of items that I think will be of interest to the Court is that under section 408 the definition of residence is given.

Section 408 "G" concerns the criteria of residence and defines what a resident of a school district is and goes into owning or renting residences, receiving mail and so on. And that's 408 immediately prior of course to 409, which the Court has already read.

The additional section of significance to the Court, some materiality is section 410, the determination by the District Executive Committee.

THE COURT: What I'm going to ask you to do is at the noon break get copies of these so I have everything you've given me before me. I don't need them right now.

MR. BOYD: Yes, sir. This one for the Court's guidance does note that if the District Executive Committee where the student now lives finds from the preponderance of credible evidence that the change in residence was not made for athletic purposes it shall declare the student a resident of the new school district and attendance zone and eligible to participate.

If there is insufficient evidence to justify the school district from which he moved to refuse to state that he was not recruited and that the change was not made for athletic purposes, the District Executive Committee where the student now

lives may declare him eligible.

In other words, if the sending school doesn't have enough background on the child, something to that effect, and can't certify by their signatures on the appropriate forms that they believe that he was not recruited and the move was not for athletic purposes, the District Committee can still allow him to play.

In fact, the sending school does not know the chill is disenfranchised if the District Executive Committee where he now lives find that the change was made for athletic purposes it shall declare him ineligible to participate in athletic contest for one or more years.

So, if the committee finds that the change was made for athletic purposes, then it declares him eligible. The real, not

really a quirk but difference in application is where there is insufficient evidence one way or the other, the District Executive Committee can still do what it likes. I believe that's the last of the procedural matters that I had to point out to the Court.

THE COURT: We will begin. It's approximately ten minutes till. You may go forward.

MR. BOYD: May it please the Court.

The Court has gone through the subchapter "h" provisions which the various superintendent, representatives, and school representatives admitted they attempt to follow in

insuring fairness in the consideration of eligibility issues.

There's some really key statements that the Court read as it went through the rules. And this is beyond notice. Under Section 119: The cases shall be decided by the vote of its impartial -- a very important word -- impartial members.

Then in situations where appeals to the State Executive Committee are allowed under Section 122, and this not such a matter, but the policy of UIL I think is important. But where appeals are allowed and under other sections it says the State Executive Committee, if the State Executive Committee determines that the decision was beyond the jurisdiction of the UIL was arbitrary, not based on substantial evidence, or capricious, the committee shall reverse.

What is important here, this is a UIL policy. This is not a policy of Plaintiffs or policy of anybody else. This is UIL policy. If the committee finds that it was arbitrary, or not based on substantial evidence or capricious, the committee shall reverse. And under their own definition, shall is mandatory.

THE COURT: Are you saying that's a general statement of policies?

MR. BOYD: I would say it's a specific statement of policy. And it's a mandatory reversal if they find that the decision below has been made on such basis.

THE COURT: Except that there's no provision for review in this instance.

OPENING STATEMENTS

MR. NOLAN: Very briefly, your Honor, the point that we want to make today is that this is a matter that had been brought District 9 AAAAA Executive Committee. It was a school matter. These are school personnel, they're not lawyers, they're not judges, they're not trained in the law, and they usually do not give full length trials to the matter that you have brought before you.

However, in this instance, as you will be able to determine from listening to this transcript, we practically conducted a full-blown trial. And even though this full-blown trial was conducted, the District Executive Committee made the determination that based upon what they heard in that hearing that Greg Jones had, and his family had moved for athletic purposes.

We think that the evidence in this transcript is sufficient to uphold that. If this Court in reviewing the evidence of the transcript finds that there was some evidence to withhold that, then we think the standard of law is that it should be upheld. I don't believe the standard is that this Court should substitute its judgment for that of the school.

THE COURT: Let me speak to that right now, Mr. Boyd and Mr. Nolan. The Court does know that there is prescribed procedure for conducting of a hearing. At this time I am not prepared to say that this would be either limited to another -- whether there is substantial evidence to support.

their position or whether it would be whether they complied with their rules, their own rules for the conduct of a hearing. I can see that I'm going to be viewing it on the basis of at least both of these contexts because otherwise the rules would meaningless.

MR. NOLAN: As it's pointed out in the beginning of those rules, these are suggested procedures. These are not mandatory for this type of action.

Now, if someone is being hired or fired, then they come into play. For this type of action they are suggested for the District Executive Committee.

And I might point out to the Court that those rules are no longer in effect. They were in effect in March. Not in effect in all. The reason that this rule has been

changed is this very situation. The schools cannot hold full-blown trial every time you make a determination of this Court or they'd be holding 30 or 40 trials a year and they'd be --

THE COURT; All right, sir.

MR. NOLAN: We maintain that they developed their rules. The procedure they gave was that which was called for in subchapter "h". Even though it was not necessary, the suggested procedure that they followed it all except for the part I think that requires written instead of telling the Joneses what they were doing, that they write it down and tell them. Write down what they found and what they concluded. Instead, they simply

CROSS OF MR. QUALLS - by Mr. Boyd

Q. When you say you check out your own, you check out your own from the standpoint of the sending school, the receiving school, or both?

A. Both.

Q. Are you aware of any PAP requests which you have not -- which have been submitted to the committee which you've never investigated while you were working for Dr. Poteet?

A. No.

Q. Okay. Coach Qualls, if Dr. Poteet related that there were times that there were submissions at the meetings themselves and that you didn't have time to investigate would that be a true or false statement?

A. Well, that would probably be a false statement. If they submit them at the executive committee, then there's not reason to

check them because all of the principals are involved, the coaches that are there, the principals that are there, the sending and receiving schools.

Q. So it would be false to the extent that there have been instances where they've been presented at a committee meeting and you have not investigated?

A. Yes.

Q. In connection with Greg Jones' eligibility requests, could you tell the Court what the circumstances were when you were initially told about the application.

A. Well, when I received the application, Dr. Poteet

brought it to me and it had a letter attached to it from Snowden and so I called Bo and that initiated the process.

Q. As far as you were concerned, at that time was it just a typical transfer request at that time?

A. No, not really, I don't think. Because the letter was attached. And the circumstances surrounding that particular letter.

Q. You normally did not have letters?

A. No.

Q. Okay. Was there anything else that you thought was different about this PAP request?

A. No, not really.

Q. At this time I'll show you Exhibit Number 7. Is this the letter from Bo Snowden to which you have made reference, sir? The

first page being a letter from Bo Snowden to Dr. Poteet; the second being a memorandum from Coach Snowden; and the last page being a PAP form.

A. Yes, I believe this is.

Q. All right. sir, and there's no special meeting requested, is there?

A. No.

Q. Just the next regular meeting.

A. Well, yes, just the next regular meeting.

Q. Okay. I would like to take you to the August 9 ad hoc committee meeting.

THE COURT: Yes, sir.

MR. BOYD: Page 54, lines 22 through 25.

Q. Why don't you just read line 17 through 25 in the record?

A. "Did Mr. Johnson indicate to you in your conversations with him prior to the District Executive Committee meeting whether or not he had spoken with the superintendent of Garland about the matter?"

Yes was my answer.

And then the questions: What did he tell you?

"ANSWER: He just said that he had talked to him about it and that they were anxious to do something about the situation."

Q. All right, sir.

A. The situation that I was referring to was transfers in general.

Q. Prior to this Executive Committee meeting thought there was only one transfer that you knew of, wasn't there, only one transfer prior to the Executive Committee meeting that was being discussed, wasn't there?

A. I think this first meeting was to discuss transfers in general and specially consider this one.

Q. In fact, do you recall me asking you right after that whether or not you had a feeling when you went to the meeting since they had a majority vote, Garland, did you have a feeling

what was going to happen? Do you remember me asking you that question?

A. I don't remember, but I'm sure you did.

Q. Let me take you to page 55, lines 1 through 7. If you would read that for the Court, please. My questions first.

A. "So did you have a feeling when you went to the meetings the majority vote -- did you have a feeling what was going to happen?"

"Well, I did personally, yes.

Q. All right, sir, thank you.

Prior to the meeting you had a feeling of how Garland was going to vote, didn't you, personally?

Q. That's what I said.

Q. And that's still the truth isn't it, Coach, that's still the truth?

A. That's still the truth.

Q. And you know, don't you, Coach, that decisions are supposed to be made based on the evidence produced at a hearing, don't you?

A. Well, normally in a trial, I guess, but we really didn't consider this a trial, I don't think.

Q. Coach Qualls, you know -- don't you understand through all of these years of experience that the students and families and administrators believe that decisions are going to be made at these Executive Committee meetings on transfer issues on

evidence presented at the hearing, not on things that go outside the hearing?

A. We normally don't have hearings.

Q. Coach Qualls, do you understand through your many years of experience in this kind of District Executive Committee hearing, meeting, whatever you want to call it, that parents, students, administrators expect decisions to be made on what's presented at the hearing, not on things outside of the hearing, on things at the hearing?

A. Well, as I said, we normally don't have hearings. This is the first one we've ever had.

Q. Yes, sir, I know that. But all of the other considerations have been on things that have been talked about at the hearing, not outside the hearing, right?

A. Right.

Q. That's the proper way to do it, isn't it?

A. That's correct.

Q. And you wouldn't think it was very fair if it was your child if people were making up their minds before they even attended the meeting, would you?

A. I probably wouldn't.

Q. You remember in your deposition when we talked just

is it, it's more concrete?

A. Recruiting is more concrete, right.

Q. Yes, sir. Would it be fair to say you know recruiting when you see it?

A. I think so.

Q. You recall during the March 20, 1985 meeting hearing Dr. Poteet relating to any anonymous telephone call?

A. I believe he referred to it, yes.

Q, Okay. And you were previously aware of this, correct?

A. Yes.

Q. Prior to the meeting. And in fact, after you had chatted with Coach Overton it was sometime after that you found out about the anonymous phone call, wasn't it?

A. Yes.

Q. Did Dr. Poteet tell you anything about the anonymous phone call?

A. No, he just said had received one.

Q. Okay, did he --

A. As a matter of fact, he went into details about it.

Q. Okay. A moment ago you related to the Court that this is the only time this has ever happened in recent history I guess you would call it. Isn't it far to say that no other student has had the burden of having an evidentiary hearing required of him or her over a transfer request where both sending and receiving school have approved it?

CROSS OF MR. QUALLS - by Mr. Boyd

A. Well, we -- in fact we have denied a couple of other students in volleyball, I believe.

Q. But when the sending and receiving schools have approved it? Are you talking about Wilmer Hutchins?

A. Yes.

Q. That was a paper work problem?

A. Right.

Q. But when the paper work is right, and the sending and receiving school have approved it, no student has ever had an evidentiary hearing burden pushed open them?

A. That is correct.

Q. Just been routine approval, read the names out, everybody says okay. They talk about it and approve it generally.

A. Yes, after we check with the schools involved.

Q. Yes. The same ones that sign the athletic participation form?

A. Yes.

Q. Now, since the March 20, 1985 hearing on the eligibility of Greg Jones eligibility or transfer request, has any other student been required to submit to an evidentiary hearing in order to have their PAP form properly completed approved?

A. No.

Q. Okay. And in fact since that date there have been

some PAP forms that have been approved that aren't been complete?

A. I don't know.

Q. Aren't you aware of some at the September 1st meeting that were approved subject to completion of the paper work?

A. Yes, but I don't know whether they've been completed or not. Highland Park has those.

Q. Okay. The point is that they were approved by the committee even before they were completed?

A. Right.

Q. And those children did not have to have an evidentiary hearing, they just needed to complete the paper work?

A. Most of them were out of state.

MR. NOLAN: I object to the relevance. We have testimony that

subchapter "h" calling for that is no longer in effect; therefore, what happens now as to whether they require a hearing on it is totslly irrelevant.

THE COURT: Counsel, will you advise the Court when was it eliminated?

MR. NOLAN: It was in May of this year. The only testimony we have is that it's no longer in effect and I will present the exact date and a copy of the new rule. But we don't have anything -- subchapter "h" was not in effect during these most recent September hearings and what they did as far as the evidentiary hearings, it's a totally new procedure. It's not

READING FROM THE DEPO OF DR. POTEET

THE COURT: Counsel, at this time you may find the portions in the deposition of Dr. Poteet, if you wish. We're permitting Mr. Boyd to present portions of Dr. Poteet's deposition.

MR. BOYD: At this time, I would further point out that we would request the Court Reporter in addition to looking up the part that Mr. Nolan wants the Court to recall, to look up the other portion, which he doesn't want to recall which was the direct examination testimony that they tried to follow subchapter "h". He admitted that that's what he said in your deposition.

THE COURT: You mean on your adverse inquiry?

MR. BOYD: My adverse inquiry, on leading questions he did say something a little bit different, before he got to that.

THE COURT: WE will come to that in a moment. Let's hear what Dr. Poteet said on the deposition. Page 30, what line.

MR. BOYD: 36, your Honor, through 52.

THE COURT: All right.

MR. BOYD: Line 1.

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"QUESTION: Okay, did you participate in the drafting of this subchapter?

"ANSWER: I do not recall. No.

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"QUESTION: If it was drafted after the 1981 Texas Supreme Court decision which struck down the University Interscholastic League restriction on transfer students, would you have been involved?

"ANSWER: I would have voted, yes. I would not have been involved in the drafting."

"Mr. Nolan: When you say quote, this chapter, unquote, you mean subchapter "h"?

"Mr. Boyd: Yes, sir.

"Mr. Nolan: Perhaps just for the record, so you won't be confused, subchapter "h" is not something which is passed by the legislative counsel. They don't have any control over it. It's simply the policies of the University of Texas and its dictated by University of Texas. If they like it or they

don't like it they do not have any control. It was for your edification once again fairly recently simply by dictate of the University of Texas.

"QUESTION: But you testified earlier that you don't know of any detriment to following these procedures, correct?

"ANSWER: Well, I know it's there. In my position, I know it's thee, right, but I could recall ever having been that involved in the details of it.

"QUESTION: Do you know whether or not in addition to being there that it's recommended that you follow those procedures in contested cases?

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"ANSWER: Yes, it would be recommended.

"QUESTION: And if UIL recommends it, you don't know a good reaons for not following that recommendation, do you?

"ANSWER: We would try to, yes.

"QUESTION: Subsection "d" says that contested cases that are covered by this subchapter are presumed to be contested until they're formally settled. Within your experience the purview of your experience with the UIL, what does formal settlement mean to you?

"ANSWER: Well, if we makd a decision in the Executive Committee, then if there's an appeal process, then it goes to the appeal process.

"QUESTION: If ther's no appeal process then it's final at that time?

"ANSWER: If that's what the rules state.

"QUESTION: How have you conducted your committee in the past? Have you considered matters formally settled at the time the committee made its decision?

"ANSWER: Yes, sir.

"QUESTION: And in section 102 there on the middle of page 38 it talks about notice of evidentiayr hearing, and under subpart "a" it talks about in all contested cases, all parties including applicants and so must be afforded the opportunity for an evidentiary hearing by the appropriate UIL body after reasonable written notice. My question in that regard is: In

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this situation, do you know if there was ever any written notice given to the family or the child that, as to when consideration would be given for Greg Jones to participate in varsity football in Highland Park?

"ANSWER: That information was sent to the sending school. I mean to the receiving school, Highland Park.

"QUESTION: In this connection do you know whether or not all parties, that being the parents and their child, do you know if they were given notice of the hearing?

"ANSWER: No, sir, I do not.

"QUESTION: Do you know if under Section 102 B, concerning written notice that if there was even written notice provided --Well,since there was not written notice given to the parties, let me ask you this:

Was there written notice provided anyone that set forth all of the matters there, sir, under Section 102 B, which would be, (1) the statement of the date, times, date, days, time, place, and nature of the hearing (2) a statement of the rules under which the hearing is being held; (3) a reference to the particular sections of the rules involved; (4) a short and plain statement of the matters asserted including the various matters there under subpart 4. Do you know if a letter setting forth all of those elements was ever sent to anyone?

"ANSWER: Yes. There was a letter sent to the superintendent stating that there was this emergency meeting to

be held. A request for transfer and then as per always in our meeting, there was an agenda prepared that was posted and such as we post for all meetings.

"QUESTION: Do you know if those two documents, and I'll go over those with you later, do they comply with the items that are set forth for written notice under the rules, if you know?

"ANSWER: To the best of our ability, right.

"QUESTION: But you're not stating one way or the -- but you're not stating one way or the other whether or not they comply?

"ANSWER: No, sir, I'm not.

"QUESTION: Under section 103 under evidence and argument it notes that in all contested cases opportunity shall be afforded for all parties to respond and present evi-

dence an argument on all issues in addition to and beyond any written notice to the Jones' family or the Jones' child. Did you at the time of that District Executive Committee session afford them the opportunity to be present and present evidence? Did you personally?

"ANSWER: No, sir, there was nothing contested.

"QUESTION: Was there as far as when you say there was nothing contested, do you believe that the family and the child went along with the decision? Did you have reason to believe that they were going to go along with the decision or anything

to the contrary?

"ANSWER: I knew that they had the right to appeal to us.

"QUESTION: Did you ever send that to them in written fashion?

"ANSWER: Did to Highland Park Independent School District, right.

"QUESTION: And you sent it to the family through the Highland Park Independent --

"ANSWER: No, I sent it to Highland Park Independent School District.

"QUESTION: If the family and the child are considered parties insofar as this contest is construed by the Court, did you ever send anything to them whether in care of Highland Park Independent School District or any other address affording them the right to present evidence an argument on any issues

relating to the eligibility of their son?

"ANSWER: Never sent anything to any parent on any case whether it was positive or negative. Always to the schools.

"QUESTION: Now, the, to make sure the record is clear, and we'll go over your documentation in a little while, you are saying that you sent something to the school which would have put the parents and child on notice that they had the right to be present and present evidence?

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"ANSWER: At least to uour decision and the reason for our decision, right.

"QUESTION: Let me rephrase that.

"Mr. Boyd: Object, non-responsive.

"QUESTION: The question I'm asking, Dr. Poteet, is: Do you recall, and we'll go through the documentation, having sent any kind of written documentation to Highland Park Independent School District setting for the fact that the parents and the child could come and present evidence before the executive committee?

"ANSWER: Not specific data.

"QUESTION: Section 105 relates to the record of evidentiary hearings at the bottom of page 38 and it notes the contents for record in a case. Number one would be plead-ings, motions, and intermediate rulings. Other than request to the parents

which was evaluated by the sending school and the receiving school, were there any other pleadings or documents of such a nature that were considered at the hearing?

"ANSWER: Only information from athletic directors. In larger school districts, as Superintendent of Schools, we delegate most to your athletic directors. So normally if there's any type of meeting to be conducted outside of the regular Executive Committee meeting in which the superintendents take the action, most of that is done by the athletic directors for the larger schools, and as superintendents, we don't do

that.

"Mr. Boyd: I object, nonresponsive.

"QUESTION: The question, and I apologize if it's unclear, the question I'm asking is: Are you aware of any other documentation other than the request by the parents for the child's eligibility, which was evaluated by the sending school in Irving and the receiving school in this 9 AAAAA district, were there any other documents that were considered?

"ANSWER: No, sir. I'm sorry, no, sir.

"QUESTION: Number 2 says the record will consist of the evidence received or considered. How did you record the evidence which was received or considered at the hearing?

"ANSWER: Did not record it.

"QUESTION: So you didn't have a tape recorder or a Court Reporter?

"ANSWER: Never.

"QUESTION: Did you have at this hearing any person who was assigned the responsibility by formal motion of the committee to take minutes or notes?

"ANSWER: We normally have one of the principals of one of the high schools to take those but since there was only one item on the agenda, I was the one responsible to take the minutes and so there was really only item for consideration.

"QUESTION: Did you in your documentation write down and record the evidence that was received or considered. Who

appeared, those kinds of things?

"ANSWER: No, sir.

"QUESTION: Did you record that?

"ANSWER: Did not.

"QUESTION: Number 3 says that statements of matters officially noticed are also part of the record. Did you officially notice any particular facts in your position as the chairman? Do you recall whether you made what is called official notice of any facts?

"ANSWER: No, sir.

"QUESTION: Number 4 says records should contain questions and offers of proof, objections and rulings. Does your record contain any questions and offers of proof, objections or rulings?

"ANSWER: No, sir.

"QUESTION: Number 5 says the record

shall contain proposed findings of fact and conclusions concerning the applicability of the rules. Does your record contain any proposed findings of fact?

"ANSWER: Only record that would contain those facts is the letter that was transmitted to Highland Park Independent School District outlining the reasons that we took our action.

"QUESTION: But there's no proposedf findings of fact and conclusions?

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"ANSWER: No, sir.

"QUESTION: Number 6 says any decision, opinion, reasons or report by the hearing officer and other than this letter that you're talking about to the Highland Park folks, you're not aware of any decisions, opinions, or reasons, or reports?

"ANSWER: There are none.

"QUESTION: And finally, Number 7 says that there should be considered as part of the record all UIL staff memoranda or data submitted are to be considered. Was there any UIL staff memoranda at the time of the hearing considered?

"ANSWER: No, sir.

"QUESTION: Was there any in addition to the request for eligibility by the parents, that was evaluated by the sending school and receiving school? Was there any

other data submitted that was considered?

"ANSWER: No, sir.

"QUESTION: No, sir.

"Mr. Nolan: Can we have just a minute? I may be able to save all of us an awful lot of time.

"Mr. Boyd: Why don't we talk out in the hall. Yeah, off the record would be good."

There was a recess.

"QUESTION: Section 106 relates to findings of fact, reasons and conclusions, and section 106 which is promulgated notes that findings of fact, reasons for financial decision and

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conclusion about the application of the rules to the contested case shall be based exclusively on the evidence and matters officially noticed at the hearing. Do you know whether or not any findings of fact, reasons for final decision and conclusions were made which were based exclusively on the evidence in matters officially noticed at the hearing?

"ANSWER: Our decision was based on everything that was presented at the hearing.

"QUESTION: Okay, we'll to into that later. And exclusively on that evidence, is that correct?

"ANSWER: That's correct.

"QUESTION: Under section 107, the hearing officer, it says that hearing officer shall have the responsibility to (1) hear the committee, receive and file any requests for an evidentiary hearing. And you say you did

send out a notice to the different superintendents that there would be a hearing on this matter. (2) to determine parties and interested persons. Did you ever render any written determination of parties or interested persons?

"ANSWER: No, it was sent as per usual to the school superintendents on the committee.

"Mr. Boyd: Object, non-responsive.

"QUESTION: My question may not be clear and I apologize. In this connection, did you ever in writing determine the parties or interested persona in a written

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document?

"ANSWER: No, sir.

"QUESTION: Number 3, it notes that the person should direct the contesting parties and interested persons to appear at a specified time and place for prehearing conference. There was no prehearing conference.

"ANSWER: No, sir.

"QUESTION: Number 5, the hearing officer shall conduct the hearing in accordance with the UIL constitution and contest rules.

"ANSWER: I'm no hearing officer.

"QUESTION: I understand that, but as far as being in charge of the consideration, hearing, whatever word we want to use, you were in charge of that?

"ANSWER: That's correct.

"QUESTION: And you've already

testified on the advisability or not of following UIL Constitution and Contest Rules, correct?

"ANSWER: (Witness nods);

"QUESTION: It says that the hearing officer or person in charge should examine witnesses. Did you examine any witnesses at that --

"ANSWER: No, sir.

"QUESTION: Number 8. It says the hearing officer should receive evidence. Did you receive evidence at the

hearing?

"ANSWER: We received evidence.

"QUESTION: At the hearing?

"ANSWER: Well, at or regular hearing meeting of our 9 AAAA District Committee, yes, sir.

"QUESTION: Number 9 says that there shall be a ruling on the admissability of evidence. Were there any rulings on the admissible of any evidence?

"ANSWER: No, sir.

"QUESTION: Number 10 notes that there should be a request for persons to appear and testify. There wasn't any such request, was there, that you know, sir?

"ANSWER: No, sir.

"QUESTION: And on to number 13. To keep a complete record of each evidentiary hearing. And do you or do you not have a

complete record of the evidentiary hearing as to everything that was considered and ruled upon?

"ANSWER: No, sir.

"QUESTION: Section 110 at the bottom of page 40 deals with admissible evidence and it very clearly, in section 110 B, notes that the Rules of Evidence don't apply other than to give effect to the rules of privilege. It notes under subpart "C" the manner in which handling objections should be handled. And it says objections to evidentiary offers may be made and shall be noted in the record. Do you recall noting and ruling on any

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evidentiary objections?

"ANSWER: No, sir.

"QUESTION: Section 111 deals with the testimony to be considered at these hearings and notes that the witnesses shall be sworn. And take their -- and take their testimony shall be taken under oath. Do you recall swearing any witnesses?

"ANSWER: No, sir, didn't swear any witnesses.

"QUESTION: Did you take any testimony under oath?

"ANSWER: No, sir.

"QUESTION: Section 112 notes that in a contested case a party may conduct such cross-examinations as may be required or a full and true disclosure of the facts. Were those persons who allegedly gave evidence at this hearing, were they cross-examined by

anyone?

"ANSWER: Yes. Everybody could ask question they wanted to.

"QUESTION: How many witnesses did appear at your hearing in this instance?

"ANSWER: Only two.

"QUESTION: Okay. And who was witness number one?

"ANSWER: Mr. Charles Qualls, Athletic Director at Mesquite. I'm not sure Mr. Homer Johnson is a witness or not. He is on the committee but he did give evidence.

"QUESTION: Well, let's start with -- Okay, we noted just a second ago that section 111 referred to sworn testimony

and that witnesses should be sworn and give testimony under oath. But for the record, it's clear that neither Mr. Charles Qualls nor Mr. Homer Johnson were sworn.

"ANSWER: That's correct.

"QUESTION: To your knowledge to this date they have not given testimony under oath.

"ANSWER: No, sir.

"QUESTION: Who examined Mr. Charles Qualls? Who directed questions to him to which he gave answers?

"ANSWER: Committee members.

"QUESTION: Was it an informal type?

"ANSWER: Very informal, right.

"QUESTION: And Mr. Homer Johnson? The same way, an informal questioning?

"ANSWER: Yes, sir, that's correct.

"QUESTION: And who cross-examined

Mr. Charles Qualls to test the veracity of his testimony and to test the authenticity of the facts that he related?

"ANSWER: Anybody on the committee.

"QUESTION: Do you remember anybody that cross-examined him and questioned?

"ANSWER: No, there was an exchange back and forth but I can't recall exactly, no.

"ANSWER: Do you recall whether Mr. Charles Qualls was cross examined? That is challenged by the representative

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from Mesquite?

"ANSWER: No.

"QUESTION: Was Mr. Charles Qualls challenged by the representative from Garland, that is to say his authenticity and his veracity?

"ANSWER: No.

"QUESTION: Was he challenged by the representative from Wilmer Hutchins?

"ANSWER: No.

"QUESTION: And as I understand, Highland Park abstained from participating in the meeting?

"ANSWER: That's correct, sir.

"QUESTION: Is that correct? So Mr. Charles Qualls was not challenged by cross-examination as far as that goes?

"ANSWER: He was asked questions by other members of the committee.

"QUESTION: But his recollection, his truthfulness and such things were not directly challenged by anybody, correct?

"ANSWER: No, sir.

"QUESTION: And is it fair to say the same as to Mr. Homer Johnson?

"ANSWER: That's correct."

MR. BOYD: That is the major examination over the rules, what they did and what they did not do according to the rules and their attempts to comply.

CONTINUED CROSS OF COACH QUALLS

Q. Do you normally give very much credibility to anonymous phone calls?

A. Not normally, but of course we tend to investigate, you know, if we can.

Q. Sure. Dr. Poteet said he recalled Coach Homer Johnson saying that he had talked with several Irving coaches about the situation and that he had learned the same things that you had related when you talked to the committee. Do you recall that?

A. Yes.

Q. In connection with the home environment of a given family do you agree that it's basically a good idea if a family can spend more time together and they're not strung out all over the City on the streets traveling back and forth?

A. Yes.

Q. And to use a shorthand, it is fair

to say that you might also think it's, as a professional educator, that there's some benefit to neighborhood schools where kids do not have such a hard time getting home and getting to school?

A. Yes.

Q. And as a professional educator are you of the opinion that a good more solid constructive home environment actually makes your job easier in school?

A. Yes.

Q. Would you agree with the statement that the family unit is the foundation or the core of our society and that its

importance is paramount?

A. Yes.

Q. And would you agree that any infringement on the ability of the family to be together and to exercise as a unit and familial affairs should be the most important interest if we're going to interfere with that?

A. You'll have to repeat that. You lost me.

Q. Yes. Yes. If there's any governmental function that's going to interfere with the ability of the family to be together and to function more often as a family it should be something very important, don't you agree?

A. Yes.

Q. Do you recall that prior to 1981 another transfer rule, don't you, one that

was struck down?

A. Yes.

Q. Before it was struck down by the Supreme Court, did you know that the trial court and the appellate courts had upheld it, were you aware of that?

A. No, not really.

Q. Before it was struck down by the Supreme Court, you enforced that rule just like everybody else in the UIL, didn't you?

A. Yes, sir.

Q. And like it or not, whether it's a good rule or bad rule, you enforced it because it was a rule, right?

A. I had a note on my desk yesterday to that effect.

Q. All right.

A. But that was not a district rule, that was just something that Dr. Power had instigated?

Q. Right. It is now the rule rather than the exception, correct?

A. As District Chairman, I suppose he has that right, right.

Q. In connection with the evaluation of PAP forms, after you receive -- you get the copy of the PAP form from Dr. Poteet in Mesquite?

A. Yes.

Q. Did you bring any of those with you in connection with the subpoena for documents?

A. No.

Q. What has happened to all of those PAP forms that were --

A. For this year?

Q. Yes, sir.

A. They have been given to Highland Park.

Q. All of them?

A. All of them?

A. Yes.

Q. Do you not retain any copies in your files?

A. We retain only our own copies.

Q. Students that we're asking for transfers for -- were

any of your submissions to the District Executive Committee on September 1st of this year incomplete PAP forms?

A. Yes.

Q. And were those conditionally approved subject to proper completion of the form?

A. Yes.

Q. Do you have any recollection of a PAP form submission in connection with a young fellow named Justin Alley from Irving McArthur to Highland Park, a transfer request about the same time as Greg Jones?

A. No.

Q. Were you even aware that a Mr. Justin Alley was seeking transfer eligibility at Highland Park, have you ever become aware of that?

A. No. No.

Q. When you evaluate a PAP form when you do conduct an investigation as opposed to when you don't, but when you do conduct an investigation, do you then make a recommendation to Dr. Poteet?

A. Yes.

Q. Is that in the form of written memorandum?

A. No, word.

Q. Just orally?

A. Yes.

Q. And in Greg Jones' case, that's what you referred to

yesterday of giving your feeling on the situation?

A. Yes.

Q. Would you agree that having an impartial panel to consider the evidence at the hearing is absolutely crucial to a fair consideration on these transfer issues?

A. No, not necessarily. I think that, you know, we've always in the past conducted them this way. We saw not reason to change it.

Q. But don't you agree that an impartial panel is crucial to a fair consideration?

A. If they ask for, you know, maybe if they want a rehearing or something I think it would be, yes.

Q. So you don't think impartiality is really a factor at the initial meeting but

it might be if they wanted a rehearing?

A. Probably.

Q. Okay. Is that basically how the Executive Committee has operated since you've been affiliated with it through Dr. Poteet?

A. Well, what do you mean? What procedures are you referring to?

Q. Just as far as partiality is concerned. In other words, if somebody wanted to rehear something, then that might be a consideration. If they didn't want to rehear something, then it wasn't a consideration?

A. Right, yes.

CONTINUED CROSS OF COACH QUALLS

Q. Do you agree that only the evidence that's presentd at the hearing itself, the meeting itself, though, should be considered by the members that are voting in determining your vote?

A. You'll have to -- I don't follow you what you're trying to get at.

Q. Do you agree that when the meeting convenes and the representatives of the various schools are going to vote, that that vote should be based only upon the evidence presented at that meeting?

A. Yes.

Q. Okay. Do you agree it would be improper to be basing that vote on things outside the meeting?

A. No.

Q. You don't think that would be improper?

A. I don't think so.

Q. Would it be proper to base your vote on things outside the meeting and not at all on what you hear in the meeting?

A. No, I don't think so. I think, you know, you've got to, in the business that we're in, I think that we were charged with the responsibility, so we have to get all of the information that we could.

Q. Yes, sir. When you get that information, though, shouldn't you reveal it in the meeting rather than keeping it to yourself?

Yes. Yes.

Q. Okay. What I'm saying is, if you get information somewhere else, you certainly should reveal it at the meeting rather than holding it in, don't you think?

A. Yes.

Q. And that's the only way that you can have a decision on evidence presented at a hearing, correct?

A. That's correct.

Q. And that's more appropriate, isn't it?

A. I think it probably would be.

Q. And do you feel that it's adviseable or authorized for you to conduct ex parte or conversations with people from other schools about an issue before the meeting is actually convened?

A. Well, it, really, as I say, we don't

conduct our business that way. You know we're not on trial, we don't have juries and, you know, we're not in that situation. We've been charged with responsibility of legislative carrying out the rules of the UIL. So I don't think, you know, there's two different areas I think we're talking about.

Q. Are you telling the Judge that as far as you're concerned, and as far as prehearing matters are concerned that you consider it okay to talk to other schools and give them your feelings on what you find or what you hear and that kind of thing before the meeting?

A. I think it is, yes, we've done that in the past.

Q. I don't believe I've asked you this question, but are you aware of any written or oral notice that was provided to the Jones family prior to the March 20, 1985 district 9 AAAAA District Executive Committee meeting on the Greg Jones transfer meeting?

A. No, I'm not aware of that.

Q. Have you ever even heard there was any notice?

A. No.

Q. Is it fair to say, Coach Qualls, that when you're judging someone as to whether or not they have moved for athletic purposes that in your mind if the main reason is the move for athletic reason, you know, athletic purposes, then it's such a move. If it's not the main reason, then it would not be such a move. Is that your position?

A. Well, I think the rule says if they move for athletic purposes.

Q. Well, what if the kid plays athletics at the school he was at before and he want to play athletics at the school he goes to, does that necessarily mean there's been a move for athletic purposes?

A. Not necessarily, no.

Q. If the main reason for the move is other reasons that ahthletics, would that be the kind of move that you normally approve?

A. Yes.

Q. Did you try to influence anyone's vote at the August 9th hearing?

A. No.

Q. Did you talk to anybody at that August 9th hearing about they way they should vote?

A. No.

Q. Did you write to them about the way they should vote?

A. No, sir.

Q. Did you indicate to them in any other manner the way they should vote?

A. No.

Q. I want to talk a little bit about the March meeting that was held by the District Executive Committee. Mr. Boyd asked you about partiality, whether you thought it was necessary that the members be impartial or not. What did you think he meant by that

question?

A. Non-biased in their opinion, not having their minds made up before they came.

Q. Do you think that it -- that the people in that March 9 hearing had their minds made before they came in?

A. No, I don't think so.

MR. BOYD: Objection, calls for speculation as what other people did.

THE COURT: Sustain your objection.

Q. In these hearings, I'm sorry, not in the hearings, in

if you ask me later I'm not going to admit it? That's not unusual?

A. Well, it's probably unusual, yes.

Q. But it happens?

A. It does happen.

Q. Does it happen in connection with the testimony you give?

A. No. Not, nobody -- I did not swear him in. He did not swear me in.

Q. Okay.

A. I'm giving sworn testimony today.

Q. And you weren't sworn in at the March 20 meeting, were you?

A. No.

Q. And there's not any way we can determine -- we don't get a signal from you when you're saying what you really fell and what your official position is, do we, there's no signal you give, is there, coach?

A. Probably not, no.

Q. Now, there's another reason that a coach might sign an athletic form that says that a child and family have not moved for athletic purposes. Can you think of another reason besides an actual move for athletic purposes?

A. Well, I guess he wouldn't move for athletic purposes.

Q. Right. Right, a bona fide move of a family.

A. Right.

Q. And if Coach Overton thought it was a bona fide move of the family then it would be proper for him to sign that statement?

A. Sure would.

Q. Coach Qualls, to be real direct about it in the 15 or 20 or so years that you've known Coach Overton, have you ever known him to lie to you?

A. No.

Q. Earlier you were asked about subchapter "h" and the rules that are followed in contested cases. Other than Greg Jones, you haven't had any other contested cases on eligibility transfers where sending and receiving schools have approved the PAP form in the last ten years?

A. If we have they've been taken care of by the school itself.

Q. But you haven't had any contested matters that arose people giving evidence, that kind of things, and people being present arguing?

A. Not on transfers.

Q. So there wouldn't be any need to use the rules on contested cases unless such an occasion arose, correct?

A. I believe that would be correct.

Q. And this is the only time you can remember recent history of such a thing has arisen?

A. Yes.

Q. Do you recall counsel's question to you about whether or not you would know a move for athletic purposes if you say it?

A. Yes.

Q. Do you remember your testimony yesterday, it's pretty hard to look into the mind of any individual to determine their intent?

A. Very difficult, yes.

Q. No, after the March 20, 1985 hearing, what do you recall is the first instance that you chatted with that -- about that with any of your principals? Just the first instance?

A. I don't recall.

Q. You just don't recall it. Are you saying you didn't or that you don't recall?

A. I don't recall.

Q. But you're not denying?

A. You're asking me the first time.

Q. Yeah, the first overturn, the first vote of ineligibility. You're saying that you do not recall talking to either of your Mesquite principals at all about that hearing?

A. No. No.

Q. Are you denying that you did?

A. I'm not denying I did, no, we could have.

Q. And does -- to make sure your answer is clear Mr.

Q. In fact, prior to the March 20, 1985 vote which you made on behalf of Garland in the Greg Jones hearing how often prior to that had you voted for Garland on transfer issues?

A. Well, I can't remember exactly. Sometimes, but not, you know, regularly. Our superintendent is in Austin a lot.

Q. Okay.

A. Any time he's out of town, I represent him. So, I couldn't tell you exactly how many.

Q. Generally, there are one or two meetings a year, is that right, for transfer requests?

A. Probably three. Usually before football and before basketball and for spring sports.

Q. Okay, sir.

A. I mean that's the way I remember it.

Q. And is it safe to say that prior to the March 20 vote that you actually can recall having voted before on transfer issues at District Executive Committee meetings or you can't remember?

A. I can remember, yes.

Q. It is also fair to say, Coach, that during this time period that in your district where the sending and receiving school have both approved the transfer that Greg Jones is the first time that a matter arose to this level of evidentiary hearings?

A. The first one I can remember.

Q. In your deposition you said the first time in about 37 years, didn't you?

A. It's the first one I can remember. I don't remember, you know, exactly what I said in the deposition.

Q. Do you recall my question on page 33, line 10?

My question to you:

"QUESTION: In 37 years, though, you can't recall or since you've been Athletic Director since '62, ever voting against a child whose sending coach and receiving coach and their administrations have approved the transfer, can you?

"ANSWER: This is true.

Does that sound like what you said in your deposition?

A. Yes, this is true.

Q. In 37 years would you tell the Court

whether or not there's ever been a close call other than Greg Jones, to you, a close call on whether or not there's been a move for athletic purposes or for recruiting?

MR. NOLAN: Your Honor, I want to object to that questions because it's assuming a fact that's really not in issue. These rules haven't been around for 37 years, and I think that that --

THE COURT: Sustain your objection as to the particular phraseology.

MR. BOYD: Thank you, your Honor.

Q. Since the rules have been in effect, have there been

any other transfer requests on which you've had a question about whether or not a student has moved for athletic purposes or has been recruited in your district?

A. Some that we've checked on. I mean, you know, we've had parents write a letter. We've requested the other superintendent and this type of thing. You know, I don't -- I can't recall any, you know, just exactly the specific time or place or person.

Q. Do you recall any other student on which you have allegedly received information that indicated to you there was a possibility, possibility of a move for athletic purposes other than the young man that's the subject of this litigation?

A. I can remember us instructing the district chairman probably to check with the superintendent of where the certain people

came from and this type things as to, you know, why the parent moved and things of this nature.

Q. Did you ever have in your mind, in the back of your mind when considering any other transfer requests, since the rules have been in effect, the fact that a particular student might have moved for athletic purposes, other than Greg Jones, ever?

A. I can't recall, you know, offhand of any specific case.

Q. Is it your feeling that no other student who has transferred between these district, that you have considered,

is it your general feeling that there have not been any moves for athletic purposes, other than this disputed case?

A. No, I wouldn't say that, because, you know, I don't know.

Q. If you don't know and you have suspicion, is an evidentiary hearing one way to try to bring it up to a head?

A. Well, if I had any proof or reasonable doubt or something, I would. If I was the representative, yes, I would question it.

Q. Have you ever requested another transfer besides Greg Jones to the extent that you questioned this?

A. Not to the extent this has been questioned, not to where it got in court, but we've questioned them on numerous occasions, you know, about why did somebody move or --

Q. I apologize. When you have

requested them have you ever asked anybody else to bring in witnesses to make statements to the committee? Anybody else, any other student?

A. Not to my knowledge that we've called anybody to come in. Usually it's done through the superintendent and their athletic director or coach from the receiving school.

Q. And always before, all other students have basically just had to submit additional written materials, correct?

A. Well, that was correct because it satisfied our needs.

Q. Right.

A. In other words --

Q. Any time there's been a question before, there's not been a requirement of an evidentiary hearing, it's merely been satisfied by submitting additional written material that satisfied the committee, correct?

A. True.

Q. Okay. And since the March 20 meeting at which Greg Jones' eligibility issue was considered, there have not been any other instances in which you required any other student to assume an evidentiary burden, that is to say bring in witnesses to try to prove to you anything; is that correct?

A. This is true.

Q. Is it also fair to say that in connection with this case there's absolutely no hint of recruiting?

A. I would say this is true.

Q. Have you known Coach Overton in the past, Coach Johnson?

A. No, I did not know Coach Overton before this.

Q. Have you discussed --

A. I've known of him. Not personally, no.

Q. Do you know anything of him professionally, whether or not he's been active in any of the associations or any of those things?

A. I know he's a good coach. He was I believe at Abilene Cooper and had a good record and has done well since he's been at Irving McArthur.

representative prior to a vote whether or not you felt like you would approve or disapprove a particular application when it was presented?

A. We discussed things I'd say all of the time before. Like, for instance, just to give you an example, last year our -- two of our girls' basketball teams were disqualified because we had girls that had played at another school that we didn't know about and Wilmer Hutchins had one and I discussed with Coach Qualls about this prior to the vote not asking him to vote for us, but just discussing the situation, because I knew he was going to vote by the book and I would have done the same thing to him.

Q. Now, the Wilmer Hutchins matter, though, didn't involve a move for athletic purposes, that had to do with the completion

of paper work?

A. That was a very important thing because we had to forfeit all of our games and they did, too, so it was very important.

Q. It had to do with paper work, though, didn't it, paper work?

A. It had to do with --

Q. Just filling out paper work?

A. And getting it approved.

Q. Yes, sir, submitted.

A. This is true.

A. And about our situation at the same time because we were involved in it, too.

Q. You remember very well, correct?

A. I couldn't tell you the specifics, I just remember talking to him about the --

Q. But at least you remember talking to him about it?

A. This is true.

Q. But two months after this event, isn't it a fact you couldn't even remember talking to him about this subject, about Greg Jones?

A. No, I remembered talking to him, I just couldn't tell you the specific time that I talked to him.

Q. You couldn't even remember that you had talked to him about the Greg Jones situation prior to the meeting which was only two months prior to your deposition, correct?

A. No, that's not correct. I told you that I had talked to him, that I just couldn't recall the time, whether it was before or after.

Q. Is that what you told me, coach?

A. That's the way I remember it.

Q. MR. BOYD: Request that I approach the witness, your Honor, for reading of a deposition.

THE COURT: You may.

MR. BOYD: Page 20, line 23.

Q. Coach, our procedures are, if you will follow along

with me, if I have read anything improperly you let me know. Line 23, page 20.

"QUESTION: It would be improper if people were trying to conduct a kangaroo court and have hearings, ad hoc hearings away from the body itself, wouldn't it?

"ANSWER: This is true.

"QUESTION: As a result, are you generally careful to see that consideration of allegations and evidence and whatever that evidence may be is discussed only at the hearing rather than other places?

"ANSWER: Yes.

"QUESTION: That would be important to a fair and impartial hearing.

"ANSWER: This is true.

"QUESTION: Now, prior to the hearing on the eligibility of Jones, did you have any communication with Dr. Matthews or

any of his representatives, his athletic director or anybody --

"ANSWER: No.

"QUESTION: -- about the subject matter of this hearing?

"ANSWER: No.

"QUESTION: What about Dr. Poteet or any of his people, did you have any communication with them?

"ANSWER: No.

"QUESTION: Or his athletic director, Mr. Qualls?

"ANSWER: Charlie Qualls.

"QUESTION: You didn't talk to him about it?

"ANSWER: Not that I can recall."

Did I read that correct?

A. Yes.

Q. Do you still feel that it's as important as you did on May 30th, 1985, that considering allegations and other things only at the hearing is important to a fair and impartial hearing? Do you still feel that way?

A. Mr. Boyd, this is true. I've never talked to anybody about what was going on. In other words, that we wanted to disqualify somebody ahead of time or was wanted to do this or do that. Now, that's never been done

in any way.

Q. Today do you feel that it's important to generally be careful to see that considerations of allegations and evidence, whatever that evidence may be, is discussed only at the hearing rather than other places? Do you still feel that's important?

A. Yes, I feel --

Q. You don't think it ought to be discussed other places, do you?

A. This is true.

MR. BOYD: Can I approach the witness on one other part of the deposition, your Honor?

THE COURT: Yes, sir.

Continuing on at the same page, line 21. Excuse me, line 25, page 21. Reading:

"QUESTION: Anybody else that was there that day that voted on Greg Jones, that you had any communications with concerning the subject matter of that hearing?

"ANSWER: No.

"QUESTION: This is because this is the procedure that you are -- that are supposed to be followed?

"ANSWER: Yes."

Q. Did I read that correctly, sir?

A. Yes.

Q. Those are the procedure that have previously been adopted by the committee, correct? Utilized by the members of the committee?

A. I don't know that they were adopted, but I

MR. NOLAN: Excuse me, your Honor.

MR. BOYD: Let me rephrase. I'll withdraw the question.

THE COURT: The question is withdrawn.

Q. These are the procedures by which to your knowledge had been conducted on eligibility issues by this Executive Committee, correct?

MR. NOLAN: Your Honor, I object, he's asking about something that's not in evidence.

MR. BOYD: Your Honor, I just read it.

MR. NOLAN: Please, if I can finish, then I'll have the whole objection.

MR. BOYD: Your Honor, may we approach the bench so that the witness is not --

THE COURT: You may come around here. Is this going to be from the deposition that you had previously read?

MR. BOYD: I don't know if it will be or not.

THE COURT: Bring the deposition so we can be referring to this. One moment.

(Whereupon a discussion was held out of the hearing of the Court Reporter and the Jury.)

THE COURT: We've had a conference so that they're going to state the question slowly. Pay attention to the way it's stated to you. If we have a problem with the way it's stated, we'll rephrase it.

THE WITNESS: Okay.

MR. BOYD: Sorry, coach.

Q. The procedures that we talked about in the deposition of considering only allegations and evidence presented at -- to the body of the meeting where eligibility issues are considered, this had been the way you have conducted business in the past at District 9 AAAAA, is it not, isn't it?

A. Well, so far as I know it's the same. You know, I don't remember all of the --

THE COURT: Counsel, he said so far as I know is

all he has said.

MR. BOYD: Yes, sir.

Q. Do you know of any exceptions to that conduct?

MR. NOLAN: Your Honor, hasn't that just been answered so far as I know. If I knew of any exception --

THE COURT: I don't know, that an indistinct answer, so I think the question is: What do you mean by so far as I know? I think, the Court is interested.

MR. NOLAN: I just thought he answered, I'm sorry, I withdraw my objection.

THE COURT: That's a half answer.

A. Well, let me say this, Mr. Boyd.

Q. Well let me rephrase the question.

A. Well let me answer it this way.

Q. Let me rephrase it because we've had an objection and I think it's kind of been

distorted.

What I want to know is are you aware of any exception in that procedure in the way the committee has handled votes on eligibility in the past on transfer issues, are you aware of any exceptions to that conduct?

A. I'm not aware of any, no.

Q. Okay, that's all I wanted to know.

Q. I would like to take you back to the general time frame of the March 25 meeting. With all due respect, I do accept the fact that you have testified that you do not recall

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Do you recall telling me earlier this year that if Dr. Poteet said that you tried to follow subchapter "h" in eligibility hearings on eligibility of student transfers that you would go along with that if that's what he said? Do you recall tell me that?

A. I don't recall telling you that, but I might have told you that. I'm not saying I didn't because, you know, our meetings --

Q. Did you understand my question?

A. Well --

Q. Do you recall telling me that?

A. No, I really don't.

Q. Okay.

A. But I haven't read the deposition, you know, since I signed it saying that's what I said.

Q. Do you recall me asking you in your deposition generally if you had become aware

of subchapter "h" and its content and you said yes?

A. I really don't remember it but I may have said that.

Q. At this time, Coach, I'm reading from page 18, line 15 of your deposition.

"QUESTION: Have you ever become aware of subchapter "h" or its contents?

"ANSWER: Yes.

"QUESTION: Generally or specifically? I mean have

you ever specifically tried to follow it?

"ANSWER: Generally we probably this year approved a hundred transfers and I don't know of any we didn't approve except this one.

Q. Did I read that correct?

A. That's correct.

Q. All right, sir. And then page 19, line 15:

"QUESTION: The specific question I'm talking about is subchapter "h". There's a long list of things about written notice to the parties and interested people and how evidence and arguments are presented in all of those kinds of things. That's not as important when there is an approval because the parents don't mind then, correct?

"ANSWER: Yes.

"QUESTION: It's really important

when there's a question about a student, wouldn't you say? In other words, that proper procedures are followed?

"ANSWER: Yes. I think, you know, we always want to.

"QUESTION: I mean who's going to object to your procedures if the child plays, nobody, correct?

"ANSWER: This is true.

"QUESTION: Now section 123 reads this way. And that goes into ex parte conversations. Is that correct?

A. I would say it's correct. But, Sam, let me say this, I don't make the procedures, you know, I'm just a voting member.

The Superintendent of schools does that.

Q. Page 77, line 19.

"QUESTION: Dr. Poteet said in his deposition to the effect that the District Executive Committee attempts in contested cases such as this to follow subchapter "h" that governs hearings and appeals. You agreed with that earlier, do you still stand by that?

"ANSWER: I would -- I mean I'm not that familiar with.

"QUESTION: If he says he trys to do that, do you have any reason to question it?

"ANSWER: No, I'd agree with him.

"QUESTION: Section 102 under subchapter "h" reads as follows: In all contested cases all parties including applicants for waiver of eligibility rules and alleged violators of UIL rules must be afforded the

opportunity for evidentiary hearing by appropriate UIL body after reasonable written notice. And then it goes on for some other things.

Did I read that correctly?

A. Yes, sir.

Q. All right, sir. Just generally speaking, Coach Johnson, do you feel, too, that football has some very important life skills to offer young folks?

A. I certainly do.

Q. Do you think it's the most important education that

Q. Other than quarterback controversy, is there anything else that you recall coming up in the way of evidence other than the PAP form of course?

A. Other than somebody had talked to the coach. And it was a quarterback controversy and at one of the two hearings it came up that one of them asked the athletic director or the coach specifically.

Q. Let me ask you this: If you don't know that it occurred, please, sir at the first meeting.

A. I don't know which meeting it occurred, no, sir.

Q. You do not remember anything more specific

than a controversy then, from Coach Qualls presented at the first meeting.

A. That's what I remember, yeah.

Q. And you remember the PAP form which you've utilized in the past to form your decision, correct?

A. Yes.

Q. Any other evidence that you can recall that you based your decision on in casting the majority votes at the March 20 meeting?

A. I remember that it was brought out that there was a controversy.

Q. Any other evidence?

A. And that was the basis of my vote.

Q. You recall when the presentation was made by Highland

different reasons that caused you concern?

A. I was caused more concern over the quarterback controversy.

Q. Didn't you tell me in your deposition that you thought it was highly unusual for somebody giving recitation to the committee to list one reason and then later on list another reason?

MR. NOLAN: Your Honor, I object to this. The basis of my objection is the time and the second one is the reason for it is the relevance and that is, when you are reviewing an administrative body's decision, if there is evidence there from which they could have based a decision, that is what the Court looked at, not their own thought processes, you don't go into the thought processes of why you made this, why you did not. That's the first part.

The second part is that we are not maintaining that which was presented at the March hearing is that which is being relied upon for this determination, but rather that which was presented and is before the Court at the August hearing, so that which was presented to them at the March hearing may have some relevance. The actual facts that were presented, but why they made their decision going into the thought processes of the individuals on this board is totally irrelevant. And in fact is not even subject to discovery as to why they made their decision

Moreover, if it's not subject to discovery, Mr. Nolan should have made an objection earlier because what I'm talking about is reflected in the record and I think we can make this most brief going ahead and reading in it in the record.

MR. NOLAN: At the depositions, I didn't care what Mr. Boyd asked. It was much simpler so he could ask whatever he wanted to. My failure to object when he was taking it was a timely matter. , Evidence before the Court is when it's important.

As to predisposition, I don't have a problem with that, but you do no -- it has also been the case law -- Yick Wo does not speak to that. When they talk about arbitrary and capricious they know that if in a hearing, like August 9 hearings they are presented evidence, not presented any evi-

dence that's arbitrary or capricious, or if there is some other evidence of arbitrary or capricious, but you do not go into their thought proceeses, just like you don't go into the thought processes when they pass the law. The reasons for passing are relevant. Law either stands or falls on its own merits just as th evidence stands or falls on its own merits.

THE COURT: The Court will hear th evidence at this time. Overrule your objection, I am not determining the standard at this point.

Q. Page 111 of the Homer Johnson deposition on May 30th, 1985 at line 15:

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"QUESTION: Are you aware what the family said the reasons were for the move?

"ANSWER: Well, there was two things brought up by the superintendent. One time he stated that they moved for higher academic standards. Number two, at another time he stated that they moved because the older boy was in --

"QUESTION: Dental School?

"ANSWER: -- dental school or medical school. But that was at two different times or two different conversations and two different reasons. And that's another thing that kind of made me question.

"QUESTION: Do you think the move has to be for one reason?

"ANSWER: Well, I think that if I'm the administrative officer from Garland and I'm bringing a transfer to the district com-

that were presented before the meeting was commenced?

A. No.

Q. Do you recall me asking you if Coach Overton came in and refuted what Coach Qualls had said and actually told you that Coach Qualls was in error, that he never talked about a controversy, that there was not problem between the family and the coach, that this controversy thing was blown out of place and out of proportion, if that would affect your answer? Do you recall what your answer was?

A. Yes, I remember telling you that I would have to look the head coach, who I really didn't know his name at that time, eyeball to eyeball, I think I said.

Q. And the superintendent?

A. And the superintendent, or the athletic directors.

Q. And that they would have to prove to you beyond a shadow of a doubt that this move was not for athletic purposes, correct?

A. This is true.

Q. Beyond a shadow of a doubt is not a light burden, is it, to you?

A. What I was trying to say to you was that they would have to prove to me that that was the reason.

Q. Coach Johnson, proving beyond a shadow of a doubt while they're looking you in the eye is not a light burden to you, is it?

Is it?

A. Well, I don't think you understood exactly what I meant. See, you know, we're school administrators and not lawyers. I mean I don't understand a lot of these terms, but what I was trying to tell you was that they were going to have to look me in the eye and tell me that that's the way it was.

Q. And, Coach, if they looked you in the eye and they told you how it was you said you still might not change your vote, didn't you?

A. I said unless they convince me.

Q. Beyond a shadow of a doubt?

A. Unless they proved to me that that's the way it was.

Q. You used the word "beyond a shadow of a doubt".

A. I probably did, that's one of my phrases.

Q. How much shadow is there in a shadow of a doubt proof, is that barely proove (sic)?

A. What I was trying to tell you was that they were going to have to prove to me that that's the way it is.

Q. Coach Johnson, in fact you have never held a student in the district 9 AAAAA who wanted to have eligibility issues approved, a student transfer issue approved, you've never held another on to proving

anything to you beyond a shadow of a doubt, have you, sir? Have you?

A. Yes. The ones that brought to us I was convinced that they moved because they had to move and not for athletic purposes. If I hadn't, I would have voted against them.

Q. Coach Johnson, let me restate the question: No other student in district 9 AAAAA in the last ten years since they've been using this form where the sending schools have approved the transfer, in other instances have you required a student to prove anything to you beyond a shadow of a doubt, have you?

MR. NOLAN: Your Honor, that's the same question.

MR. BOYD: Well, he hsn't answered it.

THE COURT: He has not answered

A. Okay, let me say this.

MR. NOLAN: Excuse me.

MR. BOYD: May we approach the bench?

MR. NOLAN: Can we have that read back? I mean can we have his answer read back?

THE COURT: We'll have the question and the answer both read back.

(Whereupon the question read back.)

THE COURT: He has not answered.

MR. NOLAN: I thought he said yes.

THE COURT: He is not addressing shadow of a doubt, he is saying yes or no. He is not responding to the question. You can read it again, but he is not answering the question. He said because I believe it.

He does not address the phrase "shadow of a dobut" (sic). He's avoiding an answer. So address the question again.

Q. Coach Johnson, maybe I can make this a little shorter and simpler for you. In the past you have always approved PAP forms when they've come in with the sending and receiving school properly executing the PAP form in your district at your executive committee, correct?

A. After we request the people involved, I mean this is not the only time we've ever questioned anybody.

Q. And that's all of the evidence that people generally have to put in is that PAP form properly executed by everybody,

correct?

A. Plus letters from --

Q. Sometimes letters?

A. We require letters.

Q. Okay, you require letters.

A. Yes, sir.

Q. Now, have you ever put any of those people to proving anything beyond a shadow of a doubt, particularly bringing in the principal, the superintendent or the athletic director?

A. We've never brought in those people.

Q. Only Greg Jones, right?

A. Right.

Q. Coach, did you make any contributions at the district Executive Committee in March that were oriented toward asking Coach Overton to reconsider his approval of the PAP

form? Did you recommend one way or another?

A. No.

Q. Who did, who made that?

A. I don't recall. I really don't.

Q. You don't recall who made the motion or --

A. I don't recall anything about that.

Q. Did you know of any reason that Coach Overton's approval should be questioned? Did you know?

A. Nothing other than what was brought at the meeting.

Q. If what Coach Qualls told you at the meeting was not

capable talented young people can participate in and enjoy?

A. Yes.

Q. What do you recall the evidence being presented at the March 20 hearing?

A. That's the first hearing?

Q. Yes.

A. I recall either Dr. Poteet or Coach Qualls, and I remember exactly which one, he's the district chairman and he assigns a lot of duties to Coach Qualls, and I recall him saying that he had, you know, checked with Coach Overton on this matter.

Q. Coach Qualls said that?

A. Said that, and I think Dr. Poteet probably had checked with the athletic director.

Q. Well, if I represented to you Dr. Poteet didn't testify that way, do you have a

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Q. How do you describe the intent that a family has when they want to move? How do you know what the intent of the family is, you personally?

A. Me personally?

Q. Yes, sir, how do you know what that family's intent is?

A. Well, of course I have this -- I make these decisions a lot more than anybody else in our district does because we have a freedom of choice in Garland. And we have people frequently wanting to move from one school to the other. And I studied the situation closely. If I have reason to believe that they're moving for athletic purposes, then I won't approve it.

Q. If you have reason to believe, right?

A. Well, if I have.

Q. It's possible?

A. I should have said proof. You know.

Q. And you told me in about a third of the instances that you're overruled by your superintendent, your own people in your own district, aren't you?

A. Sometimes the superintendent overrules me.

Q. It's important to study closely the actual facts in a case before you make a determination, correct?

A. This is true.

Q. Now, it's safe to say that other than what Coach Qualls told you at the March 20 meeting you never did any

call the man, did you?

A. No, I didn't call him.

Q. That would have been a good source for what he said, did you?

A. Now, since then I've talked to the athletic director.

Q. Did you understand my question about Coach Overton?

A. Yes.

Q. You said you want to get out of here about 3:00. I'm going to try. My question is: Did you ever call up Coach Overton and Coach Overton if he had told Coach Qualls the things that Coach Qualls reported?

A. I never called the coach.

Q. Would that have been an unreasonable thing to do to closely look at the facts?

A. In other words, we voted. The meeting was already over at that time.

Q. Coach, you didn't call the athletic director before that meeting either, did you, the March 20 meeting?

A. I didn't call him either one.

Q. You didn't call either the athletic director or the coach?

A. This is true.

Q. After the meeting you knew Coach Overton what he had said as reported by Coach Qualls affected you, did you then

think it was unreasonable to call Coach Overton and ask him?

A. I didn't think about calling him. I've never called him.

Q. Did you think it would have been unreasonable to call the Jones family then and ask them the reasons?

A. I didn't feel like that was my business.

Q. But you said a minute ago you thought it was important to closely examine the credible evidence, wouldn't you?

A. But I examined the evidence as brought in that meeting.

Q. And your decision was no better than the evidence that came to that meeting, correct?

A. This is true.

Q. And evidence that you took over the

conventional evidence of the mere PAP form, correct?

A. I evaluated everything that happened in the meeting. And that was the way I arrived at my vote.

Q. Normally the PAP form is enough properly completed, correct, normally?

A. I would say sometimes.

Q. Sometimes or normally?

A. I would sometimes because we questioned, and on a good many occasions we send back and say you've (sic) going to have to get a letter from the principal; you're going to have to get a letter from the uncle that they're living with or something

else.

Q. Did anybody make a suggestion that somebody ask Coach Overton to send a letter? Would that have been unreasonable?

A. I don't remember anybody asking that.

Q. That would have been the normal procedure, wouldn't it, to ask for more letters, ask for explanations, wouldn't that have been normal?

A. No, that's not our normal.

Q. Okay, sir. You would agree and represent to the Court that nobody at that meeting so far as you knew knew the Jones family any better than Coach Overton, correct?

A. I wouldn't say --

Q. To your knowledge.

A. To my knowledge.

Q. Coach Overton is the one that had been coaching the boy, correct?

A. This is true.

Q. And he lived over there with the family, correct, in Irving?

A. I suppose.

Q. Coached their boy at their school? Did anybody there say that they even knew the Jones family?

A. Anybody at the meeting?

Q. Yes, sir.

A. Not unless Dr. Power did. I don't recall, you know,

THE COURT: I do permit you to go into rivalries, things of that nature that might bear upon the the instant situation, but the overall picture is another one.

Mr. BOYD: Yes, your Honor.

THE COURT: Certainly, you may continue. I'm not critical, I'm just limiting where we go.

Q. Would you say, Coach, that UIL wrote the rules to insure fair play between the students?

MR. NOLAN: Your Honor, I object, I don't know, one, what rules he means, and two, I don't know if he's in a position to say why the UIL did what they did.

THE COURT: I will sustain your objection. You may lay a predicate for your question, please.

Q. Do you have any reason to believe or let me rephrase it. Do you know whether or not the constitution and contest rules were written for the benefit of students in order to insure fair play?

A. I think they was written for fair play.

Q. Did anyone bring up at the meeting to your recollection that Greg Jones was an honor student, member of the National Honor Society, respected kid?

A. This was brought up at one of the two meetings, I

Q. District 9 AAAAA transactions only. Sometimes, most of the time, almost all of the time a student satisfies your burden of proof, which you call beyond a shadow of a doubt on the basis of documentation only submitted to District 9 AAAAA Executive Committee, correct, on the basis of documentation?

A. Unless there's some question raised as to the transfer, the reasons for the transfer.

Q. And even then, it's still resolved on documentation, letters, whatever else you ask for, correct?

A. This would not be true if we had a quarterback controversy somewhere and somebody moved in, or we had two different reasons stated for a person moving. They would have to call witnesses, if this hap-

ened.

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pened.

Q. Coach, never before -- never before, and I think you've said it, never before have you required a student to go beyond -- a transfer student to get approved with the properly complete PAP form, you've never before required them to go beyond submitting documentation for the District Executive Committee, right?

A. This is true.

Q. Greg Jones' situation he had to bring in witnesses, correct?

A. This is true.

Q. Have you ever told anybody at the District 9 AAAAA committee that when you vote you're voting on the standard of

changing your vote? Didn't you tell me that?

A. I told you that they would have to prove to me because I felt like Coach Qualls was an honest man and I'm sure they are.

Q. Beyond a shadow of a doubt, if they came in and said: Coach Qualls was wrong. They, not Coach Qualls, they would have to prove to you beyond a shadow of a doubt that Coach Qualls was wrong, is that right?

A. They would have to prove to me because this is my situation. I've known Coach Qualls for 35 years. I let him pick officials when we play ballgames. That's how much I believe in him. These other people, unfortunately, I don't know that well. If I knew them that well, I'd probably have that much confidence in them, too.

Q. So Coach Qualls' information wasn't good, there may have been an injustice done

here, isn't that fair to say?

A. I would say that, that what Coach Qualls said, if he said anything that wasn't right, it was a mistake because he thought it was correct.

Q. September 5, 1985, just a couple of weeks ago at the District Executive Committee meeting did you vote for Garland on the transfer request, did you vote this last time?

A. September the 5th. I can't - I would imagine I did but I'm not --

Q. Okay, you don't remember?

A. In other words, any time we have somebody like moving from Louisiana to Mesquite, rather than have another meeting, we will say we approve these forms on the condition that they are fully completed. So we don't have to go back over there for another meeting when these forms are completed.

Q. And for the Court's edification, you do require or recall approving the transfer of a Garland student to Highland Park High School who moved into a rental residence in Highland Park, don't you?

A. This is true. I checked this out myself.

Q. You did and it's an intra-District 9 AAAAA move, isn't it?

A. This is true, but let me explain this.

Q. Well, I'm just asking the questions, Coach. It was an intra move in District 9 AAAAA, not even from outside the district, is it?

A. This is so. I approved it. This boy is a real good --

Q. Excuse me. And the boy had family reasons for wanting to move, didn't he?

A. This is true.

Q. And you approved it?

A. I approved it because I thought -- and I hated to loose (sic) him because he was a good football player, but he had a logical reason for moving.

RECROSS OF JOHNSON - BY MR. BOYD

Q. And you talked to the family. You took the time to talk to the family to determine the reasons, didn't you, Coach?

A. I didn't talk to the family. I talked --

Q. Who did you talk to?

A. I talked to the head coach, who knew the boy well.

A. And I also talked to the principal.

Q. The people that knew the boy, right?

A. This is true.

Q. And that's the difference between this situation moving into Highland Park and Greg Jones where you did not talk to the principal and you did not talk to the coach before you voted, correct?

A. Well, this is correct but I've learned a little something from this Greg Jones case. I'm checking all of them a

little closer.

MR. BOYD: Pass the witness.

REDIRECT EXAMINATION

BY MR. NOLAN:

Q. In Greg Jones' case, did someone talk to Greg Jones' coach in Irving?

A. Yes, the designated person from our district, which I think was Dr. Poteet or Coach Qualls.

Q. In the one where someone moved from Garland to

CROSS OF COACH OVERTON - BY MR. BOYD

MR. BOYD: At this time, your Honor, we would call Coach Overton.

THE COURT: All right, sir, we'll ask him to come in. Coach Overton.

(Whereupon the witness was sworn.)

RAY OVERTON

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOYD:

Q. Just for identification purposes, Coach Overton, please give us your full name.

A. Ray Overton.

Q. And how are you employed at this time, Sir?

A. I am the head football coach at McArthur High School in Irving, Texas.

Q. How long have you been that football coach?

A. I have finished two years, I'm beginning my third season there. I came in January two years ago.

Q. How long have you been a professional in the educational endeavor?

A. I've been a football coach for 39 years.

Q. All right, sir. And you are familiar with the situation surrounding Greg Jones, is that correct?

A. Yes, sir.

Q. And I will ask you to identify page 3 of Plaintiff's

Exhibit 7 the PAP form which purports to have your signature. Is that correct, sir?

A. Yes, sir.

Q. And your signature generally just certifies to the statement above, is that right?

A. Yes, sir.

Q. Did you personally do any investigation to determine whether or not there had been any recruiting involved in connection with Greg Jones or whether you felt there might be any move for an athletic purpose?

A. I visited with Coach Beavers. In fact, Coach Beavers called me when Greg talked to him about moving over. And Coach Beavers is a good friend of mine and we talked at length about the situation and he gold me then, he says: Coach, if there's any problem, says I won't let the young man play

at Highland Park. And I said I know of none.

Q. For your information, the Court has had read in or read to him the transcript of the testimony that you gave at the August 9 hearing. Do you recall testifying there under oath?

A. That was in Mesquite.

Q. Yes, sir.

A. Yes, sir.

Q. And since that time have you had any reason to reconsider any of the statements you made at that time?

A. No, sir.

A. And for brevity somewhat, would you tell the coach, excuse me, the Judge, whether or not you would adopt the statements that you made then today as well?

A. Why, yes, yes, I would sign the paper again today.

Q. And the statements you made there were true and correct of your own knowledge?

A. Yes, sir.

Q. For the record, Coach, did you tell, prior to the March 20, 1985 meeting, did you tell Coach Qualls that Mr. Jones had been complaining because you had not give his son a fair chance to play?

A. No, sir.

Q. Even words to that effect?

A. The nearest thing that I could say in that -- he had called me, I don't know, a number of times about Greg. And I told him

about his mother and his father coming both to see me and telline me why they were moving.

Q. Excuse me. He calling, you mean Coach Qualls?

A. Coach Qualls called me and he was asking about it and the first time I told him exactly what they had told me. And then later he had said that some people from Irving had talked to him and said that there was a controversy between me and Greg or me and the Joneses. And I told him at that time that I knew of nothing. That -- Well, let me just tell you the whole thing.

In the -- in the beginning of this thing, the parent

had both confronted me and told me why they were moving and I had not reason to question that.

And when Coach Qualls asked about this controversy and asked if there was a controversy between he and I, and I said none that I know of. I said the Joneses -- I talked to them one time about their son in this football season.

We have an open house and in the first week of our ball practice, and at that time we show all of the parents what we do in the off season as well as that and let them watch practice. We uses to do it, but we can't because it's not in school days. And that night Ms. Jones asked me, said: Coach are all of the quarterbacks going to have an equal opportunity to make the team? And I told her that we had the three young men,

they were all very close, and that we were going to try to get each of them the same number of attempts with the first team, the second time, and the third team.

And it goes back to Coach Mosher, when I worked for him he told me that you can always pick your number one quarterback if he can take the second or the third team and move it against the first group. So we always go through that procedure. And we did, and I had my backfield coach who worked with the three quarterbacks record every snap.

At the time we played Highland Park our first game, each quarterback had had within one snap of exactly the same as every other one, and this was the only that either Mr.

Jones or Ms. Jones or Greg said anything to me about football or anything else.

Now, at booster clubs, I would see either Mr. Jones or Mrs. Jones, usually Mrs. Jones, I don't remember Mr. Jones being there very much, but I don't think, could have been, but we might speak and sometimes we didn't. She would be at the back and I would be at the front talking. But never one time did anyone say anything about me playing their son or why I didn't play him or anything else.

I'm sure that the Joneses and the Halls and the Hands all thought their won was number one. I wouldn't think much of them if they didn't. But --

Q. No, in connection with you coaching experience, are you aware of instances in which parents have tried to apply pressure to

you in order to get their kid to play more?

A. Oh, I've had that a lot. And it usually works in reverse.

Q. Now, then, are you telling -- would you describe for the Court how you would compare those kind of parents with the way the Joneses behaved?

A. Well, of course there' no comparison. In other words, I'm sure that, like I said, I'm sure that the Joneses felt like Greg was number one. I can accept that, but they never said one thing to me or as to my knowledge, not to any of the other coaches, none of our coaches every mentioned it. And

CROSS OF COACH OVERTON - BY MR. BOYD

I --

Q. Could you tell how you got along with Greg himself in school, did you have any problems with Greg?

A. No, sir, I teach chemistry and Greg was in my chemistry class, excellent student, National Honor Society student.

To my knowledge, Greg has never had a minute's problem with any teacher, any coach anywhere. He's a super young man and we hated to loose (sic) him. I would like not to have signed the letter because I would like to have kept him, but I saw no reason not to if this was for their family's benefit.

Q. So, if I understand you correctly, by way of your explanation, you did not tell him that you and the Dad were cross with one another over playing time?

A. No, I told him, I said that Charlie, between you and I, I said the Dads may hate my guts, but they've never said a word. And somebody else from the school district called Coach Lytal, our athletic director, and asked him to investigate because they thought this.

And he called a number of parents. I didn't investigate it, but he did, and he called a number of parents and people that were at all of our games, and he could find nothing to indicate this.

And like I said, as far as our relationship, me and the Joneses, I always thought everything went fine. I know they

CROSS OF COACH OVERTON - BY MR. BOYD

MR. NOLAN: Your Honor, I object, this is a leading question. This is is own witness, and I wish that he would ask what he told Coach Qualls instead of --

THE COURT: Sustain your objection, this is a leading question.

Q. Okay. Did you even speak about with Coach Qualls about the competition, if any, that had existed between Shawn Hall and Greg Jones?

MR. NOLAN: Your Honor, that is also a leading question.

THE COURT: Overruled, counsel, he can identify as to a person.

MR. NOLAN: But he's saying did you even speak about this, which calls for yes or no as opposed to asking what, if any, doesn't take it out of it.

THE COURT: Sustained. Make it

in any matters. You can identify a person as to competition, as to Shawn Hall.

Q. Did you speak with Coach Qualls about any relationship between Greg Jones or Shawn Hall

A. Yes, I did.

Q. And what did you tell him?

A. Of course, let me -- let me say this from my standpoint. Any competition between Greg and Shawn occurred before I came to Irving, so, here again, this is hearsay. They -- some of the coaches that were on the staff, when I came

to McArthur said that the two boys had competed against each other in junior high. I later found out that then Shawn had moved to California and was not there his freshman year. When he came back as a sophomore Shawn Hall played defensive and Greg played quarterback and was the starting quarterback in all ten of our junior varsity football games as sophomore. Then as a junior, we had both of them and they competed against each other then. And this was the competition that they had.

A. If I understand you then, the only competition you described was the Junior year, that's the only that you had any knowledge about?

Q. That's the only one that I had any knowledge of.

Q. And isn't it true that in the

Sophomore year that Shawn Hall actually played defense for the varsity team, a total separate team from Junior Varsity?

A. Shawn was our number five back. When we went to our nickel defense he came in. He was not a regular, but he played there. And Greg was the starting quarterback on our Junior Varsity team.

Q. Are those two separate teams?

A. Yes, sir.

Q. Separate schedules?

A. Separate schedules. Same coaches work with them, but they're separate schedules.

Q. And the boys are playing different positions?

A. Yes, sir.

Q. And then when you said in the freshman year, would that be 9th grade to those of us that went through that generation?

A. Yes, sir, that's our Freshman year, and I came there and of course this is the thing, I came at the middle of their Freshman year. Shawn Hall was not in McArthur and Greg was not in the football program, he was playing basketball.

Q. So in the 9th grade, as far as you know, from what ever sources, can you tell us whether or not you're aware of any competition at all in the 9th grade?

A. None.

Q. And finally do you recall speaking with Coach Qualls about any bad feelings between you and the Jones family?

A. No, other than what I said. I said

that they may -- they may not like me at all because their son didn't play. I'm sure that the Halls felt the same way because I know they thought their son was the number and like I say we were playing Bryan Hands. He had started for us the year before and had played 10, well, 11 ballgames for us and he was our starting quarterback through that season.

Q. Could you tell the Court very briefly how Greg got in your football program?

A. Greg was, like I say, when I went to McArthur, Greg was in basketball. And some of the coaches had told me that he

had played football before. Greg had an older brother --

MR. NOLAN: Excuse me, your Honor, this, I don't object to this, except it's already been read in laboriously. This is exactly what he testified to in the hearing.

MR. BOYD: We'll stipulate. He's already said he adopted his earlier testimony at that August 9 hearing, so counsel is saying he would.

MR. NOLAN: Sure, I don't have any problem with that, I just don't want to listen to that all over again.

MR. BOYD: Counsel said he would stipulate to it.

THE COURT: I take the statement you don't want to listen to it only for the basis that it's repetitive. I understand

that. So we already have that testimony that was given at the other hearing, we've read it in our hearing, so if he went over it again now, you have adopted what you said you recall from that situation, so we will not go into it under the circumstances.

Mr. BOYD: Very good. Very good.

THE COURT: Unless it comes up as an incident or event.

Q. Coach Overton, how long have you known Coach Qualls?

A. Oh, quite a while, when I was President of the Coaches Association he was on the Board of Directors, and that was in 1975. So I've known him since that time.

Q. When you say President of the Coaches Association,

nothing else came up. Now, after that time Justin moved to Louisiana and now he's back at McArthur. I mean he's made a circle, but I really, I don't have any knowledge of exactly what happened.

THE COURT: Counsel, can you remember where you are now? I want to ask him.

You said earlier, you have said two things. One, you have said that someone called to the athletic director at McArthur. I don't know when, but sometime recently and caused an inquiry to be pursued about, I assume about Greg Jones and someone else. Can you just expand on what that was?

THE WITNESS: I'll do the best I can. Now, our athletic director told me after he had called some of the parents. Now, this was before the first meeting.

THE COURT: Give us about a time, when would that have been, if you remember?

THE WITNESS: Sir, I can't tell you exactly. It was just before this was to go to a vote, as I understand, on whether they would accept Greg or not.

THE COURT: This would be back in March at that time, somewhere in that vicinity?

THE WITNESS: Mr. Lytal could tell you the exact time. He didn't tell me, to be real honest, he didn't let me know until after he had made the investigation and everything else, then he told me that he had been asked to do that and that

he -- had made some phone calls.

THE COURT: What had he been asked to do?

THE WITNESS: To check and see if -- that he thought that the Joneses were moving for athletic reasons.

THE COURT: All right, someone anonymously called and asked that that be done?

THE WITNESS: I don't know if it was an anonymous call, it was just a call. He didn't tell me who called him. I think it was someone with one of the school systems there.

THE COURT: All right, someone from the school system. Then what happened when that call came in?

THE WITNESS: Well, Like I said, he --

THE COURT: He did it before you knew about it?

THE WITNESS: He checked with some of the parents to see if they had heard anything or they knew anything of why the Jones might move for athletic reasons.

THE COURT: Yes, sir.

THE WITNESS: And he told me that he found to indicate that we had made a mistake by signing the letter.

THE COURT: Now, you also said the time that you have been there for nearly a part of three seasons, you said.

THE WITNESS: This is my third season.

THE COURT: You have stated that some of the coaches have spoken of what would it be, a controversy or

competition, between Shawn and Greg?

THE WITNESS: Well, to my --

THE COURT: That you know of in matters that have been called to your attention?

THE WITNESS: The talked about the competition.

THE COURT: Who are they?

THE WITNESS: The coaches that are on the staff there that are not with us any more, they talked about that the young men had competed for positions and that, well, I'll just tell you exactly what they said. They said that Shawn had beaten Greg out. And I don't know, I didn't know this until the Mesquite meeting and Mr. Jones said then that we have a -- that at that time the Junior High's have a white and an orange team and that one played on the white team; one

played on the orange.

THE COURT: This was to be Junior High. It has nothing to do with McArthur.

THE WITNESS: No, sir, this was in the eighth grade at Travis Junior High School.

THE COURT: All right. Anything else then about that inquiry or rather those remarks from the subcoaches, we'll call them? But the competition that you heard there was a Junior High competition?

THE WITNESS: Yes, sir.

THE COURT: And all of the competition that you have discussed between Shawn and Greg has been that which you

nave had personal knowledge while you have been there as head coach at McArthur?

THE WITNESS: Yes, sir. And that's all I can testify to.

THE COURT: All right, back to you.

Q. If the record reveals that Coach Qualls confirmed in his testimony here that you allegedly told him, number one, that the daddy was complaining because you didn't give the son a fair chance; complaining to you that he was going to take his son to Highland Park where he could get a better chance to play. Number three --

THE COURT: All right, break it into parts, just leave it at the first one.

Q. Okay on number one, if he said in the evidence that the daddy was taking the boy to Highland Park so that he could get a

more fair chance to play and if Coach Qualls was saying this is what was related to you by Mr. Jones, can you tell us whether or not that would be a true statement?

A. Mr. Jones never mentioned Highland Park other than the travel, to avoid the travel. Like I said, there was nothing said about Greg playing or not playing. Now, like I said, and I told Charlie, I said: They may not like me at all because I didn't play him more.

I can understand that. But they never said anything to me about it.

be. We would like for them to compete. But the statement is made about first and second and third team. We really didn't -- didn't feel that way. If we were starting Bryan Hands, if we needed to pass we used Greg. If we needed to run we used Shawn. I don't know that one was second team or one was third team.

MR. BOYD: We have no further questions, Coach, I know you're a busy man, we appreciate it.

THE COURT: Mr. Nolan.

MR. NOLAN: No further questions.

THE COURT: You will still be around in town the next two days, won't you, hopefully at other things?

THE WITNESS: I hope so, if they don't fire me.

THE COURT: WE all have that risk. Mine comes up when we get elected. They can fire me, too.

THE WITNESS: Mine goes from week to week.

THE COURT: You are excused, sir

(Whereupon a recess was held.)

STEVE JONES

having been fully sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOYD:

Q. Steve, would you give yuour full name, please?

A. Stephen Craig Jones.

Q. Where do you reside?

A. 3856 Potomac, Dallas.

DIRECT OF STEVE JONES - BY MR. BOYD

Q. Are you the brother of Greg Jones?

A. Yes, sir.

Q. And how are you fully employed at this time, what do you do?

A. I'm a dental student at Baylor College of Denistry (sic).

Q. And how long have you been a dental student?

A. Since the fall of 1983.

Q. Could you tell us since you began your dental school, have you run into any kind of problems just in general with the school?

A. With the schools, no, sir.

Q. How about your living circumstances?

A. Yes, sir.

Q. Would you recite those kind of problems and what resolutions you arrived at for the Court.

A. Yes, basically the first year was all classroom work.

Q. What year was that?

A. That was '83- '84 school year. This past year, '84-'85 saw a change in schedule. I had lecture courses as well as laboratory courses and by about mid September of 1984 I saw it was apparent that something was going to have to be done. I was going to have to move closed in to school or something because I was doing too much traveling back and forth. I would have lectures in the morning, laboratory course sometimes in the afternoon. I would be going home and have to come back.

Q. Just traveling problems?

A. Yeah.

Q. Now, did you have any other responsibilities at the school?

A. Yes, sir, I'm the president of my class.

Q. Does that take any time up?

A. Yes, sir.

Q. Did that impact on your schedule in the fall of 1984?

A. Yes, sir.

Q. Could you tell us how you resolved the traveling problems or the time problems being a full time dental student in the fall?

A. In the fall before the move what I did was usually ride back and forth to school with my dad and he would bring me back to school at night and I would bring a change of clothes, load up whoever I could find, sleep

on the coach (sic), to go school the next morning. Repeat the thing the next afternoon.

Q. Was that generally what you did?

A. That happened at least three nights a week.

Q. So you're telling the Court you didn't even know where you would be sleeping three nights a week generally?

A. Yes, sir.

Q. What kind of problem did this cause for you personally?

A. Just I felt like I had never really got rested until

the weekend because I felt I was always on the go and didn't really know where I was going to be at what time, which night.

Q. Did you register any of these problems with your parents?

A. Yes.

Q. What did you tell them?

A. I would say it was probably to late September I approached my parents and said that I was going to have to take out a loan if they couldn't do something and put me up in an apartment or somewhere close into school, because I couldn't do that driving all year.

Q. Could you tell us what, if any, connection you had to the move as far as you know? I mean were you involved in that in any particular extent?

A. All I know is I went to my parents

and told them I needed to move and, you know, and they said: Well, we'll talk about it and work it out and see what happens. And then the next I knew, you know, they came to me with the solution, and it was the perfect solution, because I couldn't have gotten any closer to school in an apartment.

Q. In connection with Greg's athletic teams and so on, could you tell the Court over the last couple of years what connection you've had with Greg's athletic career?

A. My connection -- I think I've attended one or two ballgames each year he's been in high school, but with my

schedule, I haven't had time to really keep up with him in his athletics.

Q. Will you tell the Court whether or not you encourgage (sic) your mom and dad to resolve your locational problems in order to help Greg's athletic career?

A. No, that wasn't a consideration at all.

MR. BOYD: Pass the witness.

CROSS-EXAMINATION

BY MR. NOLAN

Q. Steve, where did you go to undergraduate school?

A. Baylor.

Q. In Waco?

A. Uh-huh.

Q. And I wanted to get my time frame right. When you're talking about approaching your parents in mid September, that's 1984?

A. '84

Q. And that's where your -- a change in schedule from just classrooms to classroom and lab?

A. To laboratory change, yes.

MR. NOLAN: I have no further questions.

THE COURT: Anything else, Mr. Boyd?

MR. BOYD: I don't think we have any, your Honor, at this time.

THE COURT: Mr. Jones, you are excused, please.

received a call.

Q. In connection with deciding whether or not a young person should be allowed to transfer and participate in UIL activities, do you feel that that's an important decision for the District Executive Committee?

A. Extremely important.

Q. Do you thing that only credible evidence should support the decision of the committee?

A. I do.

Q. Is that important to insure fairness to the individual and the system?

A. I do, yes.

Q. Prior to the meeting, what was your experience with considering the transfer requests of students between districts?

A. I had participated, of course, this was my first year as superintendent, so my

first year on the UIL committee. It was my first experience.

Q. Have you been involved previously as well?

A. No, this is my first year, but we have had some other transfers before that meeting.

Q. All right, sir. Could you tell us at the hearing if you registered any concerns about statements made or hearsay statements made when the speaker was not present, particularily (sic) Coach Overton?

A. Yes, I was concerned about -- first of all I was

that Coach Qualls talked about?

A. I don't think it would have been unreasonable.

Q. It would have helped, wouldn't it?

A. In all probabilities, we would have gotten more insight.

Q. Did anyone suggest that someone call Coach Overton or the Joneses and ask them to come and be allowed to make statements?

A. As I recall, there was a suggestion that Coach Overton be called on the telephone.

Q. Do you know any reason why that wasn't done?

A. Not really in the -- in the intervening process, discussion kept moving and we decided not to call. I think it was kind after joint decision that we would take the document we had in front of us and work with

that.

Q. As you sit here today would it have been probably a little better in order to valuate what Coach Qualls said to call Coach Overton and get his input at the time?

A. I think so.

Q. Other students that you have considered for transfer at District 9 AAAAA Executive Committee meetings have generally just submitted complete paper work, is that correct?

A. Yes.

Q. And that the routine, isn't it?

A. Yes.

Q. And no other student has had a burden of having to have an evidentiary hearing or present witnesses, have they?

A. Not since I've participated in it, the process.

Q. You believe all students ought to be treated alike?

A. I do.

Q. Coach, how would you describe District 9 AAAAA the football rivalry, is it just a dead relationship between the different teams or would you say it's fairly intense?

A. Extremely intent. I would say when it is so very important to all of us, I would not exclude myself. I want to win. I like to win.

Q. Do your citizens in your district expect you to try to produce a winner?

A. Very much so. We're football conscious.

Q. Would you say that it's extremely enthusiastic crowd?

A. Very much so.

Q. Is the -- generally speaking, do you find, although maybe healthy, do you find the competition with Highland Park to be very keen and very intense?

A. Well, Wilmer Hutchins and Highland Park is most intent than any other school within the district because last year the first year we beat them and they had been beating up on us very good.

Q. The community was pretty proud of that, weren't they.

A. Yes.

Q. In your estimation, it wouldn't exactly be correct then to say there's not much of a rivalry in this district?

A. I think there's quite a rivalry, I think there's quite a rivalry.

Q. In all fairness, Doctor, if Greg's PAP form had been a request for him to participant as a shotputter, or a long distance runner, do you think it, do you, with your educational perspective, do you think that it would have gotten the same attention it got?

A. No, I don't think so.

Q. In fact, isn't it fair to state that in fact the kid was allegedly going to play quarterback and maybe at Highland Park, didn't that probably have something to do with the feelings there in your estimation?

A. I would think it had something certainly to do certainly in my estimation that

football and basketball are the primary sports. We're pretty keen on that. The secondary sports are important, but not as important.

Q. If his application had been for a minor sport probably not even raised an eyebrow, would it?

A. I don't think so, not in my estimation.

THE COURT: Counsel, was Dr. Matthews participant in the August 1980? That will come later, won't it?

MR. BOYD: Yes, your Honor.

THE COURT: That's fine.

will see. You may ask him. You may relate he has had a prior deposition taken.

Q. Okay. Is it also true, Dr. Matthews, at that time in your deposition I asked you if you were aware of any subsequent investigation done by Dr. Poteet after the vote and you responded you were not aware of any such thing, correct?

A. I was not.

Q. Had you asked Dr. Poteet to do any investigation or other.

A. No. No.

Q. Totally unaware of anything he might have done, correct.

A. Right.

Q. And as you sit here today, you're still unaware of anything he might have done, correct?

A. That's correct.

Q. Dr. Matthews, to a great extent your decision on that day of March 20th of 1985 to vote against the eligibility of Greg Jones was based a great deal on supposition rather than hard facts, wasn't it?

A. Yes, it was.

Q. And don't you believe it's a little more fair to base a child's eligibility to participate in enriching activities on hard facts rather than supposition?

A. I do.

Q. Do you also feel it's proper for the District Executive Committee to give impartial consideration to a student's request?

A. Yes, I do.

Q. Free from prejudice or bias from other things that have happened but make decisions on good credible evidence?

A. Based on the facts presented.

Q. Do you remember telling me that Homer Johnson made a remark that he always votes against transfers at the meeting?

A. He made that remark as a philosophy, I think.

Q. And his philosophy that he espoused, didn't that suggest to you that maybe he wasn't coming to the meeting unbiased, just a little predisposed?

A. I felt it was typical athletic director's comments to be totally honest with

you. I felt that he had a strong philosophy about it, a strong feeling that way.

Q. You didn't think he came there impartial though in his views towards transfers, did you, if he said he always voted against them.?

A. My feeling was that it would have to be something really strong to convince him not to vote against it. I felt that the evidence would have to be overriding, you know, that kind of statement would lead you to believe that. I would be rather difficult.

Q. If it was your child being considered, you would want

your child considered based on what was said at the meeting and not on bias or prejudice from other sources of information, correct?

A. That is true.

Q. And that is the fair way to do it, isn't it?

A. Yes, it is.

Q. For the reocrd, and I think it's already been stated, Garland had four votes in that March 20, 1985 meeting and that was the majority, wasn't it?

A. Yes.

Q. I mean whatever Garland did at that meeting carried the whole weight because there were only three other voting parties, correct?

A. Correct.

Q. And Garland was represented by Coach Homer Johnson, correct?

A. Correct.

Q. Dr. Matthews, in your normal evaluation of PAP application, the previous athletic participating form, do you think it is more recommended and more professional to rely on that form rather than hearsay or anonymous sources or tips?

A. I think realization should be on the form presented before.

Q. Yes. That way everybody is treated the same, correct?

A. Correct.

Q. And that's important in giving out impartial justice, isn't it?

A. Yes.

Q. Did you think at the time of the March 20th, 1985 meeting that it would have been good since there was some questions for the family to have been invited there so they could have given you some statements?

A. Yes, I do.

Q. There was no reason the family couldn't have been invited, was there?

A. Not that I could see.

Q. Okay. And it would have been helpful since there was some questions going in the meeting apparently by some people to have Coach Overton there, too, wouldn't that have been helpful?

A. Very helpful.

Q. Especially if you're not going to go

by the PAP form, correct?

A. Correct.

Q. Is it fair to state that school activities, eligibility for transfers and other matters, that you believe that due process should be accorded in District 9 AAAAA to students who want to get the privilege to participate in UIL activities?

A. Yes, I do.

Q. And that's an important part of school administration

to see that the people have notice and the opportunity to be heard when their interests are at stake, correct?

A. Correct.

Q. Is that how you run your school system, sir?

A. Try to.

Q. Yes, sir. And that's how you try to conduct your activities at the District Executive Committee as well, is that correct?

A. That's correct.

Q. As far as you are concerned, the vote that was taken on March 20, 1985, if that had approved the eligibility of Gregory Jones, that would have been it, correct?

A. Correct.

Q. And it didn't approve the eligibility of Gregory Jones, but you considered that a final vote, did you not?

A. Yes.

Q. Do you remember, Dr. Matthews, some discussions about trying to get Coach Overton to change his signature, his approval?

A. I don't know so much to get him to change it, but to get a clarification of just why did he sign it if he had certain reservations.

Q. If he said all of the things that Coach Qualls said that he said?

A. Yes.

Q. Why would the man sign the statement, correct?

A. That's correct.

Q. That's pretty hard to understand if he actually said all of the things that Coach Qualls said, isn't it?

A. That's true, but rather difficult to understand. If he had those reservations, why did he sign it?

Q. Correct.

A. And I made the that statement in the meeting also that I had concerns.

Q. Did anybody at the meeting to your knowledge have first hand knowledge of anything, or was this -- all of this evidence that was presented on March 20th basically hearsay statements of what other people had told them and so on.

A. The athletic -- Coach Qualls seemed

to have had the most information that was shared and perhaps was the key factor and decision.

Q. Do you recall Coach Qualls telling you that there was a big quarterback controversy over in Irving, words to that effect?

A. In effect he said that there had been difficulty with the young man in terms of the young man being demoted and consequently a problem, disagreement with the father.

Q. Between the coach and the family?

A. And the father, yes.

Q. There were hard feeling there?

A. Yes.

Q. And if that isn't true, that would trouble you, wouldn't it?

A. Very much so.

MR. BOYD: We pass the witness, your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. NOLAN:

Q. Doctor Matthews, that discussion on what Coach Overton signed the statement, you said you had a concern about why he had signed that statement. I mean why he had signed it?

A. Yes, I had a concern that why did he sign it if he felt that way that he felt.

Q. And somebody was going to check that out, was that what was talked about?

A. To the best of my knowledge, best of

my memory at least, if I'm not mistaken, that Qualls was going to get back with him, Coach Qualls or something to that nature.

Q. Do you know if Coach Qualls ever did that?

A. No, I did not. When we decided to go ahead and vote, I think that kind of nullified a lot of that effort.

Q. Do you recall anything at the meeting then which asked Coach Qualls to check with Coach Overton after the meeting about his statement?

A. No, I don't, because I left early and I had cast might

READING FROM THE DEPO OF DR. POTEET

ANSWER: I think it would be impossible for us to conduct our business, right.

"QUESTION: And you don't believe that you could conduct that business at any other time?

"ANSWER: No. What I am saying is, I don't think we could have 30 different actions that we're going to take and invite 30 different parents and such and say: Come see how we're going to vote. I don't think we could conduct our business, no.

"QUESTION: Now, then, since you usually and in the last ten years have only denied one request, it normally wouldn't be a problem, would it?

"ANSWER: Right.

MR. BOYD: Your Honor, at this time, we would like to call Mr. Hobart Lytal.

(Whereupon the witness was sworn.)

HOBART LYTAL

having been sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOYD:

Q. Mr. Lytal, will you give us your full name?

A. Hobart Wade Lytal.

Q. How do you spell your first name?

A. H-o-b-a-r-t.

Q. And your last name?

F

A. L-y-t-a-l.

Q. And are you employed, sir?

A. Yes, sir.

Q. And what is the nature of your employment?

A. The Athletic Director for the Irving Public Schools.

Q. All right. And how long have you been involved in high school athletics, Mr. Lytal?

A. 29 years.

Q. In sort of a brief fashion I would like to take you to the Gregory Jones situation. Are you familiar with the young man I'm mentioning?

A. Yes, sir.

Q. In that connection, could you tell us on or before March 20th, 1985, that would

be the first meeting, okay, where there was a vote taken and Greg's eligibility was denied, before that time could you tell us generally what the situation was in Irving, Texas as far as Greg Jones was concerned, and as far as you knew, you actually knew?

A. Policy in Irving on transfer policy, it originates at the high school. The parents of the transferring student pick up a transfer form, take it, fill it out, and return it to the coach. The coach in turn signs or refuses to sign and it comes to the Athletic Director's office. In the past years, an assistant superintendent has been designated by the superintendent to sign the transfer form. It comes to my office

and I take the form. If there are no problems, to the assistant superintendent, who in turn signs it upon my recommendation. And that was done.

Q. All right, sir. And that was done also in Greg Jones' case?

A. Yes, sir.

Q. At this time I will show you what's been marked Plaintiff's Exhibit 9 and ask if this is a copy of the PAP form that you can recall, if you can recall it that relates to Greg Jones' request for eligibility at his new school?

A. Yes, sir.

Q. Who is Mr. Cecil Green?

A. Cecil Green is the Assistant Superintendent for Instructions at Irving public schools.

Q. All right, sir. When the officials

in Irving approved the eligibility transfer and the family had signed their statement, at that time will you tell the Court how you felt about the probability of the transfer going through?

A. Well, it was handled just as any other transfer student in Irving, and I at that time names do not appear to me at all. I don't think that I even noticed Greg Jones, and I did not know Greg Jones, and I usually do not unless the coach notifies me that he feels like there's been tampering or there's something wrong. I simply take it only to the assistant superintendent for signature.

Q. Okay.

A. And that was the way this occurred. IF was probabl done with a number of other transfers.

Q. Now, irrespective of your specific recollection before the March 20 meeting, of Greg Jones' situation, could you tell the Court whether or not a previous athletic participation form, since those forms have been used, which has been approved by you as the sending school, has one of those ever been rejected before this situation?

A. No, sir.

Q. Highly unusual, isn't it for one to be rejected?

A. I can only speak for myself. It is unusual from my standpoint in the three years it's been -- yes, I don't know state wide.

Q. Is it true that in fact you were so

concerned about the rejection of the approval --

MR. NOLAN: Excuse me, your Honor, I believe he's leading the witness.

THE COURT: Sustain your objection as to leading. The question is stricken, you will disregard it.

Q. Could you tell us whether or not you made any contact with the University Interscholastic League over the rejection of the PAP form that was executed by the Irving officials? Did you make any telephone calls down there?

A. Yes, I called the University Interscholastic League

concerning this.

Q. Concerning the rejection of this?

A. Not concerning the rule, no, sir.

Q. Have you called them about the fact that the -- anything in regard to the approval of the Irving officials being rejected by the District 9 AAAAA committee?

A. I called the -- I called Mr. Bill Forney, yes, sir, after the hearing in Mesquite, Texas because I felt like at that time, and I was in attendance, that I felt like that our -- the football coach at McArthur High School and the questioning and so forth and so on, that I felt like that in some way that his professionalism had been questioned and we are a co-worker and I didn't like that at all and I don't like it now.

Q. All right, sir.

MR. NOLAN: Just for point of clarification, was that after the March hearing or the August hearing?

A. THat's after the hearing. I don't have a date, but it's after the hearing at Mesquite administration building over where Mr. Overton was called to the stand, and I was in participation , yes. I was unhappy, but I did not call and I want this in the record, about a rule. I called simply from a standpoint that I was dissatisfied in the way he was questioned and his professionalism, I felt personally was questioned, and I don't like that about an Irving employee period.

Q. What do you know about Coach Overton that would have

led you to be upset by the way he was treated? What do you know about him? I mean why were you upset that he was being questioned?

A. Well, certainly I respect Coach Overton as a coach or he wouldn't be employed by the Irving School District and I respect his professionalism and his integrity, yes, sir.

Q. All right. Sometime after the March 20, 1985 meeting at which Greg Jones' eligibility was denied by the District 9 AAAAA Executive Committee a call was made to you by someone from District 9 AAAAA, is that correct?

A. I received a call from Bo Snowden at Highland Park was my first notification that there was a problem and he -- well, I'll answer that: Yes, I did receive a call.

Q. And what was the nature of the call from Mr. Snowden?

A. Bo Snowden asked me to investigate the situation. He informed me that the District Executive Committee had denied approval and asked me to investigate if I felt like that there were any problems as far as recruitment or with moving for athletic purposes.

Q. Okay.

A. And I told him I would do so.

Q. Did anybody else from 9 AAAAA call you in regard to investigating that?

A. No, sir.

Q. How about Dr. Poteet? Did he make a call to you?

A. No, sir.

Q. In the spring of 1985 were you the athletic director at the Irving Independent School District?

A. I'm sorry.

Q. Were you the athletic director this last spring and summer?

A. Yes, sir.

Q. Did you conduct an investigation of whether or not there could possibly have been any recruiting or a move for athletic purposes by the Jones family?

A. Yes, sir.

Q. Would you please tell the Court first hand what you found.

THE COURT: What he's asking is facts rather than conclusions.

A. Correct.

When Bo called me, Bo Snowden,

called me to make the investigation, I thought because it was the first time that it had been brought to my attention, and when I did I thought first of all, you know, our district owes a responsibility to do so. So my first indication was to call Mr. Overton to the office and we visited about the circumstances of the case and I asked him at that time if he had any doubts of any kind about whether or not he should have signed or anything had changed during that period of time. He informed me at that time, no, he had not,

that he would sign it today just as he signed it then.

I asked him some facts about the case about or about Greg Jones, about what had occurred, you know, and I'm not totally unaware of McArthur football teams, because I saw them play on five occasions or six occasions during the course of the year, and I do know who is starting quarterback and who's not starting quarterbacks, but I did not know all of the circumstances which I did make myself familiar.

I also called an individual in the community who I felt like had seen every McArthur game and asked him if he had any indication or had heard of any situation that where Mr. Jones or anybody in that family had said that they would move for athletic purposes; that they would move because they

weren't satisfied with the program or anything of this nature. And I will not say who that individual is. I called him in confidence. I asked him to find out in any form or fashion if that had occurred and get back to me and I would contact the people who had heard such statements. He called me back and said: No, he had no information to give me at all about any statements that had been made in the stands or anything of this nature.

The next was to call Mr. Jones who I wanted to talk to at that time in which we visited for some two hours or in that neighborhood. I asked him some questions that I wanted to, you know, to know from him why he had moved. I asked him where he

moved. I asked him and what indication, you know, for what purpose that all of a sudden that it came up in the middle of the year. And we visited for some two hours at that time.

Now, after having conversations with Mr. Jones, I never at any time, and I think I need to make this - investigated or needed -- I felt needed to investigate a recruitment violation. That was never indicated at all because I had no indication and do not to this day that this youngster was tampered with to come to Highland Park by the coaches or anybody in that administration over there. So I dealt strictly from a standpoint that moving for athletic purposes.

And when he told me that he had moved, that he still had a house in Irving, that it was to be leased, you know, your

irst thoughts in that manner is that yes, hat in one indication of a rule that needs o be protected by the University nterscholastic League very strongly, that eople do not jump from place to place just or athletic purposes, and so I thought about hat end of.

I asked him some questions to the tandpoint that if -- why had Greg Jones quit s a freshman? I wanted to know why he had uit the. And then when he went back in to laying football, was he dissatisfied with he program at McArthur High School or was e dissatisfied with Mr. Overton or were here reasons for that? In which he indi-ated to me there were no.

Now, after thinking about it, and ooking at it from a

standpoint, I had certainly some feelings about still having a house in Irving and moving to another place, because I had been in this business a long time. But I also had a strong opinion when I went back to Mr. Overton to talk was the question is if football had been a priority, why would he have not moved as a Freshman when he quit, if he had a problem, if football had been that priority, why all of a sudden did it come?

That was the thing that I weighed in my mind. Was it -- it didn't seem like to me that football was that important at that time, why did it become important again? So I went back to Mr. Overton in the investigation, told him everything that I had talked about and told him that I felt like that I had not been able to prove that he moved for athletic purposes. And I think it's impor-

tant that I had to prove it. And I didn't do so and I sent it and stood by that statement and have stood by it from that time on.

Q. Do you feel like you are able to talk confidentially with Coach Overton on a man-to-man basis?

A. Well, certainly we can.

Q. Did Coach Overton every (sic) tell you that he told Coach Qualls that there was bad blood or conflict between himself and the Jones' family over the amount of playing time that the Jones boy was getting? Did he ever tell you that?

A. In our conversations he told that Charlie Qualls had called him on two occasions.

Q. Why don't you just tell us what he told you that he told Coach Qualls. Can you recall that?

A. I don't know that I know what he told Coach Qualls. I don't think that we ever discussed the fact that we -- see, I never dealt with it from a standpoint of what Mr. Qualls thought or what the other district thought.

I thought we had an obligation to make a judgment as to whether or not, you know, that we thought it was moving for athletic purposes. And I never doubt that they -- the rule is clear, that they make the judgment whether the youngster is eligible or not. We are obligated, if we think there's been tampering, or if we think they're moving for athletic purposes, that we refuse to sign that and alert them to that fact. That is

our responsibility as a district and we understood that clearly. So I didn't discuss with him what Mr. Qualls thought or what he did or anything of this nature. I questioned him as to what our responsibilities were.

Q. Okay. Okay. Is it your statement today you don't recall him telling you --

A. I don't recall -- I recall us discussing. He said I have had telephone calls from Mr. Qualls.

Q. Okay. Did you ever report back to anybody the substance of you investigation, what you found?

A. Yes, I -- I called I believe Bo Snowden back and told him that I did not feel like that I had proved that he had moved

satisfied with the investigation at that time what information I had. He asked -- I'm not for sure whether he asked me or I volunteered to call Charlie Qualls. I called Charlie Qualls and he told me that it would be best that I call Dr. Poteet. And I called Dr. Poteet at that time.

Q. What did you tell Dr. Poteet the results of your investigation were?

A. I called Dr. Poteet and told him that in what I had investigated that I felt like the youngster should be eligible. If I were voting on the District Executive Committee, and what information I had at that time, that I would vote that he be eligible.

Now, that's my -- was the initial conversation. Now, there was more as he questioned me and I'll certainly be glad to answer that.

Q. All right. Did you tell him that you had made an investigation?

A. Yes, I told him I had, exactly as I've told him what I had done, maybe not in this lengthy fashion, but I had done an investigation.

Q. Did you tell him anything at all that you found that looked wrong with the application, anything that looked wrong with it?

A. The application itself? Yes, I told him we would

continue to sign it, yes.

Q. In other words, you stood by your original --

A. I didn't discuss -- I did not discuss with him what I've discussed in here today. I just simply said that we're both professional people and I think that I told him that I thought that what I thought and, you know, that was it.

Q. Okay. By this time had you become aware of Greg's actual playing status as far as Irving team was concerning vis-a-vis the other quarterbacks?

A. Oh, yes. I know who's playing and I go to the games and visit with fans, yes, I was well aware.

Q. Did you know the Hands kid?

A. Hands. Bryan Hands, yes, sure I knew Bryan.

Q. And did you yourself aside from your investigation during the games or anything else, did you yourself ever hear fans commenting one way or the other about Bryan Hall or Greg Jones, these two Juniors?

A. Bryan Hands?

Q. No, Shawn Hall, excuse me.

A. Shawn Hall, Bryan Hands, yeah, I hear conversations about all schools, sure.

Q. So Mr. Hands and Mr. Hall, you would even hear comments about who ought to be the quarterback?

A. I don't -- I don't think people would tell me who they thought ought to be quarterback. WE made decisions about who's

quarterback, coaches do, I don't, and I don't think a fan would tell me that, not very long.

Q. Well, I didn't want to suggest that they could or that they had that kind of influence with you, sir. What I was asking is just, you know, getting a hot dog or a coke or everything else, did you ever hear those kind of comments?

A. I hear conversations about certainly about who is the starting quarterback, and I certainly knew that he went in and win a ballgame. Certainly I know those kind of things.

Yes, I knew Greg. I knew Shawn Hall, and I knew -- I knew all of them and Mr. Overton and I may have had conversations during the course of the year even about circumstances of that nature, you know, we're in the business, same business together.

Q. All right. Now, that is not at all unusual for you, is it, to be discussing kids that are about the same skill level? Is that unusual in football sport in high school for a coach and athletic director to be talking about those things?

A. About who starts and --

Q. Yes, just about --

A. Yeah, that would be uncommon. It would be uncommon for me to ever in any form or fashion suggest to a coach who ought to be playing quarterback or anything. That would be highly unusual. We might discuss things if it were a problem that what we're going to do to maybe cutt (sic) off, maybe